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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *
COMMONWEALTH OF MASSACHUSETTS
vs. Indictment No.
KAREN READ 2282CR00117
* * * * *

Day 16 - Trial with Jury
Before the Honorable Beverly Cannone

APPEARANCES:

For The Commonwealth:
BY: Adam Lally
Laura McLaughlin
Assistants District Attorney

For Karen Read:
BY: Alan Jackson
David Yannetti
Elizabeth Little
Attorneys at Law

Also Present:
For Brian Albert, Sr.:
BY: Greg Henning, Esq.

Norfolk Superior Courthouse
Dedham, Massachusetts
Monday, May 13, 2024

Paula M. Mills
Retired Certified Court Reporter
and Court Transcriptionist

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** Reporter's Note: At page 104, Line 10, the name "Higgins" was inadvertently typed rather than "Henning." It has been corrected.

P R O C E E D I N G SMay 13, 2024

(Court in session at 9:10 a.m.)

(Defendant present. Jury not present.)

THE CLERK: 22-117, the Commonwealth versus Karen Read. Could I have counsel identify themselves, please?

MR. LALLY: Adam Lally, for the Commonwealth. Good morning, Your Honor.

THE COURT: Good morning, Mr. Lally.

MS. MC LAUGHLIN: Good morning, Your Honor. Laura McLaughlin, for the Commonwealth.

THE COURT: Good morning, Ms. McLaughlin.

MR. JACKSON: Good morning, Your Honor. Alan Jackson, for Ms. Read.

THE COURT: Good morning, Mr. Jackson.

MS. LITTLE: Good morning, Your Honor. Elizabeth Little, also on behalf of Ms. Read.

MR. YANNETTI: And good morning, Your Honor. David Yannetti, for Karen Read.

THE COURT: Good morning, Mr. Yannetti. I am told there is an objection to something we introduced during cross?

MR. JACKSON: Yes.

THE COURT: Do you want to come over?

1 MR. JACKSON: Sure.

2 Whereupon, there was a sidebar conference as
3 follows:)

4 THE COURT: All right. So we are all set to
5 begin?

6 MR. JACKSON: This is similar to the video
7 that both counsel and the Court ended up indicating
8 they have an objection to the bulkhead to fence to
9 the front yard. I had my investigator go back out.
10 The Court had indicated that we should have done it
11 with the investigator and nobody else was in it.
12 We did exactly that. All it is, is a video from
13 the bulkhead. He opens up a bulkhead door.

14 THE COURT: Is there sound? Is there audio?

15 MR. JACKSON: There is no audio. The audio
16 has been stripped.

17 THE COURT: Okay.

18 MR. JACKSON: He didn't talk on it, anyway. I
19 wasn't there. He took the video from the bulkhead.
20 He turns, walks to the fence, goes through the
21 fence and walks to the front yard and that's it.
22 It's probably 15, maybe 30 seconds long.

23 MR. LALLY: It's about 51 seconds long. Your
24 Honor, the objection is -- and, obviously, this is
25 within the discretion of the Court, but relevancy

1 grounds. I don't know of any witness that puts
2 Mr. O'Keefe in the house, let alone in the
3 basement, in the area of the bulkhead, anything to
4 do with that. So for that reason, the Commonwealth
5 would object on relevancy as it really is just
6 cause to confuse and mislead the jury about whether
7 or not Mr. O'Keefe -- there is no indication that
8 the bulkhead is at all relevant as Mr. O'Keefe
9 wasn't in the house and wasn't near the bulkhead.

10 MR. JACKSON: Well, that's their theory, that
11 he wasn't in the house.

12 THE COURT: Explain the relevancy.

13 MR. JACKSON: We believe that there is
14 evidence that Mr. O'Keefe was in the house. There
15 is strong evidence that he was in the house.
16 That's probably coming up either today or tomorrow.

17 THE COURT: Make an offer of proof for me.

18 MR. JACKSON: Ryan Nagel and Heather Maxon
19 both saw John O'Keefe, both saw John O'Keefe and
20 Karen Read in the car together when they turned
21 almost simultaneously onto Fairview from the
22 adjoining street to the north.

23 When they pulled up, both witnesses will
24 testify that based on their looking at the phones,
25 they started paying attention to the house. It was

1 Julie Nagel who started to make her way out of the
2 house. They were there for about five minutes, 10
3 minutes, talking about Julie Nagel. Julie Nagel
4 then goes back into the house, decides to stay.
5 She doesn't want a ride home. And, as they leave,
6 both Ryan Nagel and Heather Maxon indicate they
7 looked into the interior of Ms. Read's SUV. John
8 O'Keefe was not there. Ms. Read was sitting alone
9 with nobody else in the passenger compartment.
10 They will both say they did not see him standing
11 outside the compartment. He wasn't on the street.
12 He wasn't on the sidewalk. He wasn't in the yard.

13 The only other place he could have been is in
14 the house. If he was in the house then there is
15 reason to believe that he was in the basement.
16 There is an exit from the basement to the backyard,
17 serving the very area on the same side of the house
18 where John O'Keefe's body was found.

19 That is the defense's theory. That's been the
20 defense's theory from the beginning. The
21 Commonwealth has a different theory, that there is
22 seven witnesses, nine witnesses, all of whom walked
23 out of the house or in the same way looked out of
24 the house, and no one saw John O'Keefe's body in
25 the lawn, which is where they claim he would have

1 been at the time every single one of these people
2 passed by the lawn or looked out onto the lawn.
3 The only other place he could have been is in the
4 house.

5 THE COURT: And what about him being in the
6 house? If that's true, then what? You need to
7 give me some more.

8 MR. JACKSON: If he was in the house, then the
9 most reasonable place for him to be and be injured
10 is down in the basement. There is a slab flooring
11 down in the basement that's made out of concrete.
12 That would answer the question how he got the
13 fracture on the back of his head. The lacerations
14 to his eyes, the black eyes, the bloody nose will
15 indicate a fight.

16 We've got evidence and we've got experts who
17 are going to say that he looks like he was in a
18 physical altercation, not hit by a car. If he was
19 in a physical altercation that nobody else in the
20 ground floor saw, the only other place he could
21 have been is upstairs or downstairs such that they
22 would not have witnessed the actual fight or the
23 physical altercation. The most reasonable place
24 for him to be is down in the basement, and the
25 basement services the very side of the house where

1 John O'Keefe's body was found. We would want to be
2 able to show that and establish that the bulkhead
3 is a place where if you wanted to remove something
4 large and heavy, you could easily do it. And, if
5 you did do it, that would end up right on the same
6 side of the house where John O'Keefe's body was
7 found.

8 THE COURT: All right. So apparently there is
9 third-party culprit inside the house?

10 MR. JACKSON: Correct.

11 THE COURT: And who might that be?

12 MR. JACKSON: It's unknown. It could be one
13 of several people.

14 THE COURT: So under the third-party culprit
15 doctrine, I do think this is speculative. But I am
16 going to let counsel explore this. So I am going
17 to let the video in.

18 MR. LALLY: I understand.

19 THE COURT: Okay? So the Commonwealth's
20 objection is noted, but he has to authenticate it.

21 MR. JACKSON: Understood.

22 THE CLERK: This wouldn't pertain to you guys,
23 but Mr. Kearney is in the courtroom. He cannot
24 view this witness, correct?

25 THE COURT: Correct.

1 THE CLERK: Okay.

2 THE COURT: So we will bring the witness in,
3 and he's going to be removed. All right.

4 MR. JACKSON: Thank you.

5 (Whereupon, the sidebar conference concluded.)

6 THE COURT: All right. So we are all set to
7 begin?

8 MR. JACKSON: Yes, Your Honor.

9 (Whereupon, the jury is escorted into the courtroom
10 and seated in the jury box.)

11 THE COURT: Good morning again, counsel, and
12 Ms. Read. Good morning, jurors. Let's wait for
13 the ambulance.

14 So I do have to ask you those three questions.
15 Were you all able to follow the instructions and
16 refrain from discussing this case with anyone over
17 the weekend?

18 Everyone said "yes" or nodded affirmatively.

19 Were you also able to follow the instructions
20 and refrain from doing any independent research or
21 investigation into this case since we met on
22 Friday?

23 Everyone said "yes" or nodded affirmatively.

24 Did anyone happen to see, hear or read
25 anything about this case since we left here on

1 Friday?

2 All right. Thank you very much. We will
3 bring Mr. Albert back in, please.

4 Whereupon,

5 BRIAN ALBERT, Sr., Resuming
6 having been first previously sworn, was examined and
7 testified under oath as follows:

8 THE COURT: Whenever you are ready,
9 Mr. Jackson.

10 MR. JACKSON: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. JACKSON:

13 Q Mr. Albert, this is not, this process is not,
14 the first time you've testified in a court of law; is
15 it?

16 A No.

17 Q In fact, you were a police officer for either
18 just under or just over 30 years; is that right?

19 A Yes.

20 Q During that time, how many times would you say
21 that you have testified in a court of law in any
22 capacity?

23 A I would say a hundred, perhaps.

24 Q So you'd consider yourself to be an
25 experienced witness?

1 A In what aspect? In --

2 Q You've experienced --

3 A As far as being a witness as a police officer?

4 Q You've experience testifying in a courtroom?

5 A Yes.

6 Q So you understand the oath?

7 A Yes.

8 Q You understand the gravity of perjury?

9 A Yes.

10 Q When was the last time you spoke to Mr. Lally
11 before Friday when you began testifying?

12 A Before Friday, the last time I spoke to
13 Mr. Lally was, I believe, on a conference call around
14 the time of my grand jury testimony.

15 Q Which would have been 2022?

16 A Yes.

17 Q April of 2022?

18 A Yes.

19 Q So you've not spoken with Mr. Lally since that
20 time?

21 A I don't remember speaking with Mr. Lally since
22 that time, no.

23 Q What about anybody else from the district
24 attorney's office?

25 A No.

1 Q Have you gone over the facts or what you
2 believe to be the facts of your testimony with anybody
3 before you testified on Friday, not including any lawyer
4 that you may have?

5 A No.

6 Q Did you discuss any questions that you may be
7 asked on direct examination or questions that you may be
8 posed on cross-examination with any member of the
9 district attorney's office?

10 A No.

11 Q Were you told about any exhibits or documents
12 that you might be shown?

13 A Just in the prep I believe I was shown a video
14 of the Waterfall Bar.

15 Q And that was back in April of 2022?

16 A No. That was for the prep for this trial.

17 Q With whom did you prep for this trial?

18 A Mr. Lally.

19 Q I'm confused. I thought you said you had not
20 spoken with Mr. Lally since April of 2022.

21 A Except for the prep for this trial, I had not.

22 Q Okay. That was my question, Mr. Albert.

23 A Okay. I misunderstood your question. I
24 apologize.

25 Q Did you prep for this trial with Mr. Lally?

1 A Yes.

2 Q When?

3 A Approximately a few weeks ago.

4 Q Okay. Mr. Albert, about 45 seconds ago, I
5 asked you, have you spoken with Mr. Lally before your
6 testimony in this process, this proceeding. And your
7 answer was, no, I have not.

8 Did you not understand my question?

9 A I did not.

10 Q What was confusing about it?

11 A I was expecting you to ask if I had prepped
12 with Mr. Lally. I didn't hear prep with Mr. Lally. So
13 I didn't know what you were referring to.

14 Q So when I said "spoke with Mr. Lally," since I
15 didn't say "prep with Mr. Lally," your answer was, no, I
16 didn't speak with him. I just prepped with him?

17 A Yes.

18 Q What is the difference between speaking and
19 prepping?

20 A No. There is no difference. I just
21 misunderstood your question. That's all.

22 Q Tell me about that prep with Mr. Lally.

23 A Sure. I prepped with Mr. Lally about this
24 trial with Mr. Lally, my attorney.

25 Q Where did that preparation take place?

1 A The preparation took place, I believe -- I'm
2 trying to remember exactly where it was. I actually
3 don't recall where it was.

4 Q Could it have been at the D.A.'s office?

5 A Yes, but it wasn't at the D.A.'s office. No.
6 I believe it was somewhere else, but I can't remember if
7 it was here or the D.A.'s office. I'm not sure.

8 Q I also asked you a couple of minutes ago, did
9 you review any documents or any evidence in preparation
10 for your testimony. And to that question, you also
11 answered no.

12 A I said I reviewed the video.

13 Q Well, now you are saying you reviewed a video.
14 But, when I asked you, did you see any evidence or
15 documents, anything, in preparation for your testimony,
16 you said no, correct?

17 A No. I believe I said I saw a video.

18 Q Did you misunderstand my question when I asked
19 it the first time as well?

20 A No.

21 Q Okay. I am going to try to be clearer with my
22 questions.

23 A Okay.

24 Q Let me try it again. What, if anything, have
25 you reviewed in anticipation of your testimony in this

1 trial?

2 A So I reviewed a video of the Waterfall.

3 Q Anything else?

4 A I reviewed my transcript from the grand jury.

5 Q So you have reviewed your prior testimony?

6 A My transcript of the grand jury, yes.

7 Q Which is prior testimony, correct?

8 A Yes.

9 Q When did you do that?

10 A I did that during the prep.

11 Q What part of the Waterfall video did Mr. Lally
12 show you?

13 A It was a small snippet of the video. Just one
14 of the 20 seconds of video during that night.

15 Q Which part? There's a lot of video there.
16 Which part? If you can tell us, which part did you
17 review with Mr. Lally?

18 A It just showed the Waterfall. It showed
19 patrons. It showed myself and the other people I was
20 with.

21 Q What were you doing in that 20-second snippet
22 of that video?

23 A I believe in one portion of it, I was fooling
24 around with Brian Higgins.

25 Q Fooling around?

1 A Yes.

2 Q What does that mean?

3 A It means we were just fooling around. That's
4 it.

5 Q Fooling around, like, I don't know, playing
6 arm wrestling?

7 A No. I don't think we were arm wrestling. I
8 think we were just pushing each other, fooling around.

9 Q So play fighting?

10 A I don't think I would call it play fighting.
11 No.

12 Q Do you remember seeing part of the video where
13 you took a fighting stance, sort of like this?

14 A I actually don't remember that part, no.

15 Q No. Do you remember a part of the video where
16 Brian Higgins took a fighting stance, sort of like this?

17 A Maybe, yes.

18 Q The two of you approached one another?

19 A I don't think I saw that whole video. No.

20 Q Practicing fighting techniques?

21 A I wouldn't call it that.

22 MR. LALLY: Objection.

23 THE COURT: No. He can have that. I'm sorry.
24 What was your answer to that, Mr. Albert?

25 THE WITNESS: No.

1 BY MR. JACKSON:

2 Q So what you reviewed with Mr. Lally was the
3 portion of the video where you and Mr. Higgins were
4 somehow fooling around and -- how would you describe it?
5 If it's not fighting techniques, how would you describe
6 it?

7 A Just joking, being silly. Just fooling
8 around.

9 Q Okay. Doing what physically?

10 A Doing --

11 Q What were you doing physically? I mean, you
12 can joke with words.

13 A Right.

14 Q Were you just joking with words like a stand-
15 up comedian or were you doing something physically?

16 A No. I think we were pushing each other,
17 fooling around, joking?

18 Q Okay. Did you ever show him how to throw a
19 punch?

20 A Did I what?

21 Q Did you show him how you would throw a punch?

22 A I don't remember that, no.

23 Q Did you squat down, show him how you want to
24 get low when you're either aggressive or defending an
25 aggression?

1 A I don't remember that exact pose, no.

2 Q Did he walk over to you and grab you and act
3 like he was going to drive a knee into your stomach?

4 A I'm not sure.

5 Q At some point, did you flip him around and
6 grab him in a wrestling hold?

7 A I may have. I just don't remember exactly.

8 Q Do these things sound familiar when you
9 reviewed -- as to your review of the video that you saw
10 with Mr. Lally?

11 A No. I didn't see all those in the video with
12 Mr. Lally.

13 Q Did you discuss with Mr. Lally the questions
14 that you might be asked by him on direct examination?
15 Did he go through here are the topics of conversation
16 we're going to have?

17 A No, not like that.

18 Q Did he go over with you what he believed the
19 topics of conversation might be on cross-examination by
20 either myself or Mr. Yannetti?

21 A I believe so, yes.

22 Q What did he tell you you might be asked?

23 A I don't remember exactly what he told me. He
24 said we could be asked about the night at the Waterfall.
25 We could be asked about back at the house. Things like

1 that.

2 Q Anything else?

3 A Not that I can remember.

4 Q Is there anything, given your conversation
5 with Mr. Lally, is there anything that you want to
6 change about the testimony that you previously gave
7 under oath in April of 2022?

8 A No.

9 Q Given the fact that you've now reviewed that
10 testimony?

11 A No.

12 Q You'll stick by that testimony?

13 A Yes.

14 Q Have you watched any of these proceedings on
15 any platform before your testimony?

16 A No.

17 Q You've never tuned in to anything that's live
18 streaming, any of the media coverage?

19 A No.

20 Q You're aware that your wife testified before
21 you?

22 A Yes.

23 Q I don't want to know what the words were. Did
24 you discuss her testimony with her before you testified?

25 A No.

1 Q So she came home after testifying in this
2 trial and you two never brought it up?

3 A No. I just asked her how she was doing, and
4 that was it.

5 Q Mr. Albert, are you close friends with
6 Brian Higgins?

7 A I wouldn't describe it as close friends, no.

8 Q He's a fellow law enforcement officer,
9 correct?

10 A Yes.

11 Q He works for the ATF?

12 A He does.

13 Q The Department or the Bureau of Alcohol,
14 Tobacco, Firearms and Explosives, correct?

15 A Yes.

16 Q How long have you known Mr. Higgins?

17 A I think I first met Mr. Higgins about 15 years
18 ago.

19 Q How did you meet him?

20 A It was a professional -- something at work.
21 We may have worked together. I think at the time he was
22 a Cambridge Arson Squad member, and I think he came into
23 the city of Boston to do something for work.

24 Q So you've known him for 15 years and you were
25 with him on January 28th, 2022, correct?

1 A Yes.

2 Q And he's the person that you were, quote,
3 "joking and fooling around with," right?

4 A Yes.

5 Q You had a long road trip with Mr. Higgins on
6 January 28th, 2022, didn't you?

7 A What's the question?

8 Q You had a long road trip with Mr. Higgins on
9 January 28th, 2022, correct?

10 A We drove from New York to Boston. Yes.

11 Q It's a pretty good drive, you'd say?

12 A Yes.

13 Q Consider that a road trip?

14 A Yes.

15 Q How long?

16 A I don't now if it was probably somewhere
17 around four hours, maybe.

18 Q Once you got back from New York back up to
19 Boston or the Boston area, the two of you stopped at a
20 location, correct?

21 A Yes.

22 Q What was the location?

23 A The Hillside.

24 Q And what did you two do at the Hillside?

25 A We went into the Hillside, had a drink,

1 talked. And I think Brian may have ordered food.

2 Q So once you got back from that relatively long
3 road trip, that four-hour long trip, four-hour-long road
4 trip, I apologize, you stopped at a bar and started
5 drinking, correct?

6 A Yes.

7 Q Did you have anything to eat at the Hillside?

8 A I did not.

9 Q But Brian did? Brian Higgins did?

10 A I left prior to Brian Higgins eating.

11 Q During the course of that road trip or at the
12 Hillside, did the two of you discuss Karen Read, my
13 client?

14 A No.

15 Q Did her name ever come up?

16 A No.

17 Q Without telling me anything that he may have
18 actually said, did he mention Karen Read or the topic of
19 Karen Read?

20 A No, never.

21 Q Did he mention the fact that he had been
22 texting and flirting with Karen Read two weeks prior?

23 A No.

24 Q So that subject, according to you, was never
25 addressed or broached by Mr. Higgins or you?

1 A No.

2 Q During that entire day?

3 A No.

4 Q After you arrived at the Waterfall,
5 John O'Keefe arrived subsequent thereto, right?

6 A Yes.

7 Q How long after?

8 A Approximately 45 minutes, maybe.

9 Q And Karen Read was with him; is that right?

10 A Yes.

11 Q Brian Higgins was standing right next to you
12 when she came in along with John O'Keefe, correct?

13 A I'm not sure people were standing when they
14 arrived.

15 Q Well, you remember being -- you saw a video,
16 correct?

17 A Not of -- I don't believe there is any -- I
18 saw video of them walking into Waterfall, no.

19 Q Fair enough. But you saw at least a clip?
20 According to you, you saw a clip of that video of you at
21 the Waterfall, correct?

22 A Yes.

23 Q You were situated at a high-top table, right?

24 A Yes.

25 Q Your back is sort of to the camera; is that

1 right?

2 A I'm not sure of the camera angles. The video
3 that I saw, I was at the high-top table. But I'm not
4 sure of all of the camera angles at the Waterfall.

5 Q Brian Higgins is the guy with the sweatshirt
6 with maybe a Harley Davidson emblem on the back or
7 something?

8 A I'm not sure what he had on that night. I'm
9 sure he had a sweatshirt on, but I don't know what the
10 emblem was.

11 Q Okay. He was standing right next to you in
12 the video clip that you saw?

13 A Yes.

14 Q Okay. In other words, that was the video
15 where he was standing right next to you and you two
16 turned to each other and start this play fighting thing?

17 A Yes.

18 Q So if it's that time or sometime around there
19 at the high top, you were in proximity of Brian Higgins
20 when Karen Read and John O'Keefe came into the bar,
21 correct?

22 A I just don't recall the timing of when they
23 came into the bar.

24 Q All right. Mr. Albert, did Mr. Higgins say
25 anything to you at that time about John O'Keefe arriving

1 with Karen Read at his side?

2 A No.

3 Q Did Mr. Higgins say anything to you about
4 being upset that Karen Read had shown up with John
5 O'Keefe?

6 A No.

7 Q Describe your relationship with John O'Keefe,
8 if you would.

9 A So I didn't know John that well. I had only
10 met him a few times. But every time I met him, it was
11 cordial, pleasant. I would consider him to be a co-
12 worker, even though I never really worked with him
13 directly. He seemed like a nice guy. I knew his whole
14 story about the fact that he had taken his niece and
15 nephew after a tragedy in the family, and I had an
16 unbelievable amount of respect for him doing that. But
17 I can't say that we were good friends because I didn't
18 really know him all that well.

19 Q You were far better friends with Brian Higgins
20 than you were with John O'Keefe; that's fair to say?

21 A Yes.

22 Q On Friday, you were asked whether or not you
23 knew my client, Karen Read, correct, meaning a couple of
24 days ago during your direct examination?

25 A I believe so, yes.

1 Q You were also asked the same series of
2 questions at another grand jury not involving the
3 Commonwealth, remember that, in June of 2023?

4 A Yes.

5 Q I want to be clear about this other hearing.
6 That was a non-Commonwealth hearing in front of a grand
7 jury, correct?

8 A Yes.

9 Q Mr. Lally and his colleagues were not there;
10 is that right?

11 A Yes.

12 Q I was not there and Mr. Yannetti was not
13 there?

14 A Yes.

15 Q Or Ms. Little?

16 A Right.

17 Q At that June 2023 -- and I'm going to talk
18 about a couple of dates. So I don't want to be
19 confusing. At that June 2023 non-Commonwealth hearing,
20 you were asked some questions about whether or not you
21 knew Karen Read before January 28th, 2022, before that
22 night in question?

23 A I believe so, yes.

24 Q And you testified -- before you testified, you
25 were sworn an oath?

1 A Yes.

2 Q The same oath that you swore in this trial,
3 correct?

4 A Yes.

5 Q You swore to tell the truth, the whole truth
6 and nothing but the truth?

7 A Yes.

8 Q And you knew that you were testifying under
9 penalty of perjury in that hearing, as well, correct?

10 A Yes.

11 Q And you testified at that non-Commonwealth
12 grand jury that you, quote, "believed Karen was with
13 John the night he came into Hillside. A female that
14 looked similar to Karen from the Waterfall came in with
15 him on that night. And I assume that was her, but I
16 can't say for sure," end quote.

17 That was your testimony before that grand
18 jury?

19 A Yes.

20 Q But you were also asked a similar question in
21 April of 2022 by Mr. Lally at his grand jury. Do you
22 remember that?

23 A No.

24 Q Let's start at the beginning. Before you
25 testified in the April 2022 grand jury, more than a year

1 earlier and just three months after this incident, you
2 were sworn on oath, correct?

3 A Yes.

4 Q The same oath that you took in June of 2023,
5 right?

6 A Yes.

7 Q And the same oath you took on Friday?

8 A Yes.

9 Q Isn't it true that you were asked the question
10 whether or not you knew Karen Read on January 28th,
11 2022, and you testified, quote, "I've never met or seen
12 her before," end quote.

13 A No. I don't recall that.

14 Q Didn't you indicate that you just testified --
15 I'm sorry -- that you reviewed your grand jury testimony
16 in anticipation for this trial?

17 A Yes.

18 Q You would have read the whole thing?

19 A Yes.

20 Q And you don't recall making that statement?

21 A No.

22 MR. JACKSON: May I approach, Your Honor?

23 THE COURT: Yes. And I'll see counsel at
24 sidebar when you're done with the witness.

25 BY MR. JACKSON:

1 Q Would you please take a look at that?

2 A Sure.

3 (Whereupon, there was a sidebar conference as
4 follows:)

5 THE COURT: Okay. So I allowed the motion to
6 stay away from the Federal Grand Jury and we were
7 here at sidebar. I instructed Mr. Yannetti that he
8 could say the grand jury, different date, and
9 Mr. Lally wasn't there. Do you want me --

10 MR. JACKSON: Is that not accurate? It's a
11 non -- grand jury.

12 THE COURT: But it gives the impression. I
13 have already ruled on it.

14 MR. JACKSON: All right. I --

15 THE COURT: Well, that's why I'm telling you.

16 MR. JACKSON: Okay.

17 THE COURT: So it's grand jury, date. And I'd
18 let you get into Mr. Lally wasn't the prosecutor.

19 MR. JACKSON: If I am consistently asking
20 about both grand juries, can I say "the other grand
21 jury"?

22 THE COURT: Yes. Just not "Commonwealth."

23 MR. JACKSON: Okay.

24 (Whereupon, the sidebar conference concluded.)

25 MR. JACKSON: May I approach, Your Honor?

1 THE COURT: Yes.

2 BY MR. JACKSON:

3 Q Mr. Albert, have you had an opportunity to
4 review that?

5 A I have. Thank you.

6 Q Does that refresh your recollection as to what
7 you said before the grand jury in April of 2022?

8 A Yes, but you didn't read the whole quote,
9 though.

10 Q Right. The whole quote is the following: (As
11 read), "Question: So the female you had never met
12 before; is that fair to say?

13 "Answer: No. I've never met her or seen her
14 before. Maybe once, but I don't think I've ever had a
15 conversation with her."

16 That was the entire quote, correct?

17 A That's the entire quote, yes. That's not what
18 you read earlier, but yes.

19 Q Well, what I read earlier was (as read), "I've
20 never seen" -- I'm sorry -- "I've never met or seen her
21 before." Those words came out of your mouth, correct?

22 A That's not my whole sentence, no.

23 Q You've said (as read), "I've never met or seen
24 her before." And then you said, "Maybe once, but I've
25 never had a conversation with her I don't think,"

1 correct?

2 A Right. Yes. That's my sentence.

3 Q So which is it, Mr. Albert? What were you
4 saying? Were you saying you met her and had a
5 conversation with her, or were you saying, I've never
6 met or seen her before? Which one of those two things
7 was true?

8 A I was saying that I'd met her maybe once.

9 Q Actually, what you said was, I've never met
10 her or seen her before, your words, not my words, sir;
11 isn't that right?

12 A No, because in the next sentence, I say (as
13 read), "I met her maybe once."

14 Q So you literally changed your testimony within
15 your own testimony?

16 MR. LALLY: Objection.

17 THE COURT: No. Can you answer that,
18 Mr. Albert?

19 A I believe I qualified my first sentence with
20 this second sentence.

21 Q So what changed between the first sentence
22 where you indicated unequivocally, I've never met or
23 seen her before, and the second sentence, when you said
24 "maybe once"?

25 A I'm not sure of what I was thinking at the

1 time that I said that.

2 Q Isn't it true, Mr. Albert, not only had you
3 met Ms. Read but you had spent several hours with
4 Karen Read and John O'Keefe six days before this
5 incident; isn't that true?

6 A No.

7 Q In fact, on January 22nd, 2022, six days
8 before January 28, you socialized with Karen Read at the
9 Hillside bar for several hours; didn't you?

10 A I was at the Hillside bar the week prior, yes.

11 Q It was a Saturday night, correct?

12 A Yes.

13 Q You were at the bar?

14 A Yes.

15 Q There were several other folks at the bar,
16 correct?

17 A Several people, yes.

18 Q That included Chris Albert, your brother?

19 A Yes.

20 Q A guy named Tim Daily?

21 A Yes.

22 Q D-A-I-L-Y; is that right?

23 A I'm not sure how to spell his last name.

24 Q Julie Albert was there?

25 A Yes.

1 Q Jen McCabe was there?

2 A Yes.

3 Q Matt McCabe was there?

4 A Yes.

5 Q John O'Keefe was there?

6 A Yes, he was.

7 Q And Karen Read was there, correct?

8 A Yes, she was.

9 MR. JACKSON: Your Honor, may I approach?

10 THE COURT: Yes.

11 BY MR. JACKSON:

12 Q I'd like you to take a look at a photograph.
13 Just look at that to yourself for a second and
14 familiarize yourself with it and then look up when
15 you're ready.

16 A Yes.

17 MR. JACKSON: May I approach?

18 THE COURT: Yes.

19 MR. JACKSON: Actually, I don't need to.

20 Mr. Albert, you can stay there.

21 BY MR. JACKSON:

22 Q Do you recognize the photograph that is before
23 you?

24 A Yes.

25 Q How do you recognize it?

1 A Well, I recognize the people within the
2 photograph and then the background of the photograph
3 looks like the Hillside.

4 Q Does that appear to be a photograph that was
5 taken on January 22nd, 2022?

6 A Yes.

7 Q When you were at the Hillside bar?

8 A Yes.

9 MR. JACKSON: May I publish this, Your Honor?

10 THE COURT: Is it already in evidence?

11 MR. JACKSON: It is not, Your Honor. I'm
12 sorry.

13 THE COURT: So you put it in evidence first.

14 MR. JACKSON: May I have that marked as the
15 next in order?

16 THE COURT: Yes.

17 THE COURT REPORTER: That will be Exhibit 67,
18 Your Honor.

19 THE COURT: Thank you.

20 (Whereupon, photograph was entered and marked
21 Exhibit No. 67 in Evidence.)

22 MR. JACKSON: Permission to publish, Your
23 Honor?

24 THE COURT: Yes.

25 MR. JACKSON: Thank you.

1 BY MR. JACKSON:

2 Q Do you see that photograph? Is it the same
3 photograph that you're looking at in front of you?

4 A Yes.

5 Q Describe who the people are going from left to
6 right, sir.

7 A Chris Albert, myself, John O'Keefe and
8 Tim Daily.

9 Q And this was on January 22nd, 2022 at about
10 11:00 p.m., correct?

11 A Yes.

12 MR. JACKSON: May I approach, Your Honor?

13 THE COURT: Yes.

14 BY MR. JACKSON:

15 Q Mr. Albert, who took the photo?

16 A I don't know.

17 Q Karen Read took the photo, didn't she?

18 A I have no idea who took that photo.

19 Q If Karen Read took the photo, you're literally
20 staring right at her, correct?

21 A I don't know who took the photo.

22 Q Well, who else do you think it could have
23 been?

24 A Well, there were a lot of people there. You
25 mentioned my sister, two sister-in-laws, a brother-in-

1 law. I'm not sure.

2 THE COURT: Would you turn the lights back on,
3 please? You can take the photo down.

4 BY MR. JACKSON:

5 Q Did you ever see this photo from Jen McCabe?

6 A No.

7 Q Did you ever see it from Julie Albert?

8 A No.

9 Q Chris Albert didn't take it. He's in it.

10 A Right.

11 Q Tim didn't take it. He's in it.

12 A Right.

13 Q You obviously didn't take it.

14 A Right.

15 Q And who is the guy on the far right?

16 A Tim.

17 Q That was Tim. Who's the guy next to Tim?

18 A John.

19 Q So who do you think --

20 THE COURT: Do you still need the photo up?

21 I'm sorry. I thought you were done.

22 BY MR. JACKSON:

23 Q Do you remember?

24 A Yeah. It was John. Yeah.

25 Q Okay.

1 A Yes.

2 Q So given the fact that you were never shown
3 that photo -- you've never seen that photo before today,
4 correct?

5 A I saw a photo that was sent to me in discovery
6 or to my attorney that showed only, I believe, me and
7 John in the picture. I think it's the same photo only
8 that's blown up to show everybody.

9 Q Got it. So given what you now know about that
10 night and who was there, the fact that John is posing
11 for a photo right next to you, who do you think took the
12 photo, sir?

13 A I have no idea who took the photo.

14 Q Could it have been Karen Read?

15 MR. LALLY: Objection.

16 THE COURT: Sustained. Let's move on.

17 BY MR. JACKSON:

18 Q In fact, you were interacting with Karen Read
19 and John O'Keefe throughout that evening, correct?

20 A I remember having conversations with John that
21 evening. I don't necessarily remember speaking to Karen
22 that evening.

23 Q Irrespective of whether or not you spoke to
24 her, you obviously saw her there?

25 A Yes.

1 Q You were there with her for a couple of hours?

2 A Well, I wasn't there with her for a few hours.
3 I was there with other people.

4 Q Okay. So without splitting hairs, she was
5 there, correct?

6 A Yes.

7 Q John was there?

8 A Yes.

9 Q You were socializing with John?

10 A Yes.

11 Q She was right next to him?

12 A Sometimes. Perhaps not maybe all the times I
13 was talking to him, no.

14 Q So you were socializing not exclusively with
15 her.

16 A Right.

17 Q But certainly socializing with her six days
18 before John O'Keefe ended up dead on your lawn, correct?

19 A We were there at the same time, yes.

20 Q And, yet, when you were asked three months
21 later, do you know Karen Read or how do you know Karen
22 Read, the actual question was, so the female, you've
23 never met before; is that fair to say? That was
24 Mr. Lally's question. And your immediate response was,
25 no, I've never met her or seen her before, correct?

1 That's what you said?

2 A That's not my whole response, no.

3 Q That's what you said immediately upon that
4 question, sir.

5 A That's the beginning of my response, yes.

6 Q That was the first sentence out of your mouth?

7 A Yes.

8 Q You also testified at the subsequent grand
9 jury in June of 2023. When asked, what was your
10 impression of Ms. Read, you said, quote, "I honestly
11 didn't really have one. I didn't have any conversation
12 with her. I just kind of saw her from across the table.
13 I didn't really think of it either way," correct?

14 A I don't know what that question is referring
15 to. Is that for the Waterfall or is that for Hillside?

16 Q Hillside.

17 A Okay. Yes.

18 Q All right. So in June of '23, a little over a
19 year later, your testimony significantly changed from,
20 no, I've never met or seen her before, to, I really
21 didn't have a conversation with her. I saw her across
22 the table. I didn't really think of it either way.
23 Correct?

24 A No. I think those are very similar testimony.

25 Q When you were asked in the other proceeding,

1 and this is about the Waterfall (as read), "Question:
2 Did you talk to Karen Read at the Waterfall that night,"
3 you answered unequivocally, "I did not"; is that right?

4 A Yes.

5 Q And that's what you told the June grand jury,
6 June of '23, correct?

7 A Are you referring to the state grand jury?

8 Q No. I'm sorry. That's why I'm using dates.
9 I'm trying to be careful.

10 A Right. I'm just not clear on what all the
11 dates were.

12 Q I'll see if I can clarify.

13 A Okay.

14 Q April 2022, state grand jury; June of 2023, a
15 different grand jury.

16 A Okay.

17 Q Okay? When you were asked at the June of 2023
18 grand jury (as read), "Did you ever talk with Karen Read
19 at the Waterfall that night," your answer was, "I did
20 not," correct?

21 A Yes. Yes.

22 MR. JACKSON: With the Court's permission,
23 could I play a small clip from Exhibit 53?

24 THE COURT: Okay.

25 BY MR. JACKSON:

1 Q Starting at timestamp 11:53:15, if we could
2 jut play this, and I would direct your attention, sir,
3 to the upper right-hand corner.

4 (Whereupon, the video is played.)

5 MR. JACKSON: Pause it.

6 (Whereupon, the video is paused.)

7 Q Do you recognize the individuals in this clip?

8 A Yes.

9 Q Do you recognize that person?

10 A Yes. I believe that's me.

11 Q Do you recognize that person?

12 A I do. I believe that's the defendant.

13 Q Ms. Read?

14 A Yes.

15 Q What does it appear you are doing as it
16 relates to Ms. Read in this clip?

17 A It appears I am talking at the table. I don't
18 know if it's specifically to her.

19 MR. JACKSON: Go ahead and play.

20 (Whereupon, the video is played.)

21 MR. JACKSON: Stop.

22 (Whereupon, the video is paused.)

23 Q Did you see the part of the clip starting at
24 11:53:15, going back about 30 seconds?

25 A Yes.

1 Q Okay. Who did it appear you were talking
2 directly to and who did it appear was answering directly
3 to you?

4 A I looked like I was speaking, but I can't say
5 for sure that I was directly talking to the defendant.

6 Q Even though it looked like you were looking
7 right at her and leaning toward her and she was
8 answering you?

9 A I was definitely looking that way. I don't
10 remember the conversation.

11 Q The reality is -- you can take that down.

12 The reality is, Mr. Albert, you had many
13 conversations with her throughout the night like you
14 would with anybody else that you were socializing with,
15 correct?

16 A No.

17 Q It is not like you ignored her through that
18 evening, was it?

19 A No. I just -- I think the positioning of me
20 on the other side of the table, I didn't have really
21 much contact.

22 Q There was only one person between you, and
23 that was Mr. Higgins?

24 A No. I don't think that was the setup for the
25 whole night.

1 Q I didn't says the whole night. I'm talking
2 about right then. That's just an example.

3 A Right. What's your question? Rephrase your
4 question.

5 Q Did you or did you not have conversations with
6 Karen Read that night, socializing with her?

7 A I do not recall having a conversation with
8 Karen Read that night at all. No.

9 Q And that's what you told the grand jury under
10 oath, notwithstanding this video evidence to the
11 contrary?

12 A Yes. I don't think that video shows that.

13 MR. LALLY: Objection.

14 THE COURT: I'm going to let that stand. Next
15 question, please.

16 BY MR. JACKSON:

17 Q You were interviewed by Michael Proctor on
18 January 29th, the day after this incident, correct?

19 A Yes.

20 Q And that was six days after you spent several
21 hours with Karen Read at this event, correct, six days
22 later?

23 A Yes.

24 Q You were asked by Michael Proctor whether or
25 not you knew or what your relationship was with

1 Karen Read, correct?

2 A I don't recall if he asked me that.

3 Q Did you say to Michael Proctor, quote, that
4 you, quote, "did not know Karen Read," end quote?

5 A I may have, yes.

6 Q But, when you made that statement, you did not
7 know that Ms. Read had a photograph of you at the
8 Hillside bar, correct? You didn't know that photograph
9 existed, did you?

10 MR. LALLY: Objection, Your Honor.

11 THE COURT: Sustained.

12 BY MR. JACKSON:

13 Q Sir, you were trying to distance yourself from
14 Ms. Read in your interview with Michael Proctor, weren't
15 you?

16 MR. LALLY: Objection.

17 THE COURT: Were you?

18 THE WITNESS: No, I was not.

19 BY MR. JACKSON:

20 Q Mr. Albert, you were trying to distance
21 yourself from knowing Ms. Read in your grand jury
22 testimony with -- well, I'll use the date -- in your
23 April 2022 grand jury testimony, weren't you?

24 A No.

25 Q You were further trying to distance yourself

1 from Ms. Read in your June 2023 grand jury testimony, as
2 well, correct?

3 A No.

4 Q You thought that it was important to try to
5 deny knowing John O'Keefe and Karen Read during those
6 interviews and/or that testimony?

7 MR. LALLY: Objection.

8 THE COURT: Sustained.

9 BY MR. JACKSON:

10 Q Mr. Albert, you knew that if you admitted
11 having a relationship with John O'Keefe and Karen Read,
12 you'd have a lot to answer for when Karen Read's
13 boyfriend ended up dead on your lawn six days later,
14 correct?

15 MR. LALLY: Objection.

16 THE COURT: Sustained. You can ask the
17 question differently.

18 BY MR. JACKSON:

19 Q You knew that there would be questions about
20 your relationship with Karen Read if it were known that
21 you knew her before her boyfriend ended up dead on your
22 lawn six days later, correct? There would be questions?

23 MR. LALLY: Objection.

24 THE COURT: You can ask it a different way.

25 Sustained.

1 BY MR. JACKSON:

2 Q So you lied under oath when you said, I've
3 never met or seen her before, correct?

4 A No, because that wasn't my whole statement.

5 Q The sentence, I've never met or seen her
6 before, is pretty unequivocal, isn't it?

7 A That was not the context of my whole sentence.

8 Q But those are the words that came out of your
9 mouth, right?

10 A Initially, and then I remembered that I had
11 met her once.

12 Q Let me just ask it this way.

13 A Sure.

14 Q Is that sentence true or false, that you had
15 never met or seen her before? True or false?

16 A That portion of that sentence is false.

17 Q Let's get this on the record. Did
18 John O'Keefe come into your house at 34 Fairview at any
19 time on January 29th, 2022?

20 A Absolutely not. I wished he had.

21 Q And you're as sure about that as you are about
22 the statement that you had never met or seen Karen Read
23 in your life?

24 MR. LALLY: Objection.

25 BY MR. JACKSON:

1 Q Correct?

2 THE COURT: Sustained. You can ask it
3 differently, Mr. Jackson.

4 BY MR. JACKSON:

5 Q I want to get back to the Waterfall. I know I
6 asked you this about the Hillside. I may not have asked
7 you this specific question about the Waterfall.

8 Did Brian Higgins say anything to you about
9 John O'Keefe and Karen Read walking in together at the
10 Waterfall?

11 A No.

12 Q Did he say anything or give you any indication
13 he was upset about Karen Read showing up with
14 John O'Keefe?

15 A No, he did not.

16 Q It appeared from your observations that John
17 and Karen were getting along at the Waterfall?

18 A I didn't really notice, but I didn't notice
19 anything was wrong.

20 Q They appeared pleasant?

21 A Yes.

22 Q Happy?

23 A I don't know if they appeared happy. I didn't
24 really notice.

25 Q They were interacting with others?

1 A Yes.

2 Q You didn't notice any tension?

3 A No.

4 Q No argument?

5 A No.

6 Q No yelling or fighting?

7 A No.

8 Q They looked like a normal, happy couple?

9 A Yes.

10 Q Did either of them appear to you to be
11 completely drunk?

12 A I didn't have a ton of interaction with John
13 or Karen that night. So I can't really say. But it
14 didn't appear that they were drunk, no.

15 Q You've had an opportunity to review the
16 Waterfall video. You did it with Mr. Lally, correct?

17 A Only a small portion of it.

18 Q Right. But even in that small portion and
19 based on your memory, you don't remember anybody being
20 stumbling drunk and falling down over stools and things
21 of that nature?

22 A No.

23 Q Okay. They appeared to be acting
24 appropriately?

25 A Yes.

1 Q And interacting with others appropriately?

2 A Yes.

3 Q People were buying drinks for others; is that
4 right?

5 A I'm sure. I don't recall exactly. But I'm
6 sure that was going on, yes.

7 Q It's not that unusual to say, hey, I'll get
8 this round, correct?

9 A Yes.

10 Q Okay. You left the Waterfall at 11:58; is
11 that right?

12 A Yes. Approximately.

13 Q Who was invited to come over to your house
14 upon leaving the Waterfall?

15 A Whoever wanted to, really.

16 Q You'd been drinking since about what time in
17 the evening or in the afternoon.

18 A Nineish.

19 Q That's when you went to the Hillside?

20 A Yes.

21 Q That's when you had your first drink?

22 A Yes.

23 Q And you continued drinking throughout the
24 evening consistently?

25 A Yes.

1 Q Did you believe you were okay to drive?

2 A Yes.

3 Q What kind of car did you have at the time?

4 A Ford Edge.

5 Q Black?

6 A Yes.

7 Q Who rode -- did you drive that car home from
8 the Waterfall?

9 A Yes.

10 Q Who rode with you?

11 A My wife and my daughter.

12 Q What other cars were in the driveway when you
13 got there?

14 A I don't recall. Brian Higgins' Jeep was in
15 the driveway, backing up, as we pulled in.

16 Q So kind of in your way?

17 A Yes.

18 Q In other words, you weren't going to park him
19 in?

20 A I didn't want to block him in.

21 Q Right. Right. So you waited until he moved
22 his Jeep out of the way?

23 A Yes.

24 Q And then you pulled in?

25 A Yes.

1 Q Where in the driveway did you pull in?

2 A I believe I pulled to the left side of the
3 driveway.

4 Q You would have been closest to the garage, or
5 was there a car between you and the garage?

6 A I would have been closest to the left side
7 walkway. I don't think there was a car in front of me,
8 but I'm not 100 percent.

9 Q Mr. Albert, did you move that black Ford Edge
10 at any point that night after you got home?

11 A No.

12 Q Brian Higgins was the first person to actually
13 physically get to the house? He got there before you,
14 correct?

15 A Yes.

16 Q Describe his Jeep.

17 A He had a Jeep Wrangler. I believe it's white.
18 I think it's white.

19 Q Any appendage on it?

20 A A plow.

21 Q A snow plow on the front?

22 A Yes.

23 Q That can hydraulically go up and down?

24 A I didn't see it that closely. I'm assuming it
25 can but I don't know that for sure.

1 Q After Mr. Higgins moved out of your way, out
2 of the driveway, where did he put that Jeep?

3 A I don't know. I don't know where he parked.

4 Q So you wouldn't have gotten to the house -- if
5 you left Waterfall at 11:58, you have to get out to your
6 car, get in your car, start it up, drive home, wait for
7 Brian Higgins to move his Jeep, park your car, then get
8 into the house, that's a fair assessment of the
9 mechanism of you getting home that night, correct?

10 A Yes.

11 Q You wouldn't have gotten into the house until,
12 what, 12:15, maybe 15 minutes for all that?

13 A I would put it more maybe 10 past 12:00.

14 Q Okay. 12:10 or so?

15 A That would just be a guess.

16 Q Okay. So it could have been 12:15?

17 A Yeah, and it could have been 12:07.

18 Q Who was inside the house when you walked in?

19 A My nephew, Colin; my son, Brian. And then he
20 had two friends, female friends. I believe it's Sara
21 and Julie.

22 Q What were they doing inside the house?

23 A They were sitting at the kitchen table.

24 Q And your nephew, Colin, how old was he at the
25 time?

1 A I believe 17 or 18.

2 Q Describe him.

3 A In what way?

4 Q Height, weight.

5 A So two and a half years ago. So he was
6 probably five-eleven, maybe six feet, and probably, you
7 know, I'm guessing, 175 pounds.

8 Q A big boy? I mean, not a small kid?

9 A Right.

10 Q Bigger than me significantly?

11 A Yes.

12 Q Athletic guy?

13 A Yes.

14 Q Played football?

15 A Yes.

16 Q He was good at football?

17 A Yes.

18 Q You testified that you went to the bathroom
19 after you arrived home, correct?

20 A Yes. After saying "hi" to everybody, I went
21 to the bathroom.

22 Q Was that upstairs or downstairs?

23 A I'm not sure I have a bathroom downstairs and
24 -- not downstairs but on that floor and then upstairs.
25 So I'm not sure which one I went to. I think it was

1 upstairs.

2 Q When you came back out of -- I'm sorry. I
3 didn't mean to interrupt you.

4 A I think it may have been upstairs, but I'm not
5 sure.

6 Q When you came back downstairs from the
7 bathroom or came out of the bathroom, wherever it was,
8 you no longer saw Colin?

9 A Yes. Prior to going to the bathroom, Colin
10 had said that he was getting picked up.

11 Q But you never saw him leave?

12 A No.

13 Q You didn't see him leave the house, and you
14 didn't see him get picked up by anybody?

15 A I did not.

16 Q You didn't see a car outside, waiting for him,
17 correct?

18 A I didn't, no.

19 Q Okay. You did give an initial statement on
20 the morning of the 29th to Michael Lank at about 7:00
21 a.m.; is that right?

22 A Officer Lank was in the house at that time,
23 speaking to all of us, really.

24 Q And you've admitted that you have known
25 Michael Lank for many years; is that right?

1 A Yes.

2 Q Did you see that as a problem?

3 A In what way?

4 Q A conflict of interest?

5 MR. LALLY: Objection, Your Honor.

6 THE COURT: I'll let him have it. Did you see
7 that as a conflict?

8 THE WITNESS: No.

9 BY MR. JACKSON:

10 Q You were asked who was present at the house
11 that night, the night before, right?

12 A Yes.

13 Q You stated the following people were at the
14 house that night in response to Officer Lank's question
15 (as read), "At some point during the time in question"?
16 That's how he phrased the question. Who was at the
17 house at some point during the time in question? You
18 understood that, right?

19 A I don't recall his question, no.

20 Q You knew that he was asking who was in the
21 house, right?

22 A Right. Yes.

23 Q So you mentioned Brian Albert, Jr., your son?

24 A Yes.

25 Q You mentioned Caitlin Albert, your eldest?

1 A Yes.

2 Q You mentioned Julie Nagel?

3 A Yes.

4 Q You mentioned Brian Higgins?

5 A Yes.

6 Q And then you added the detail that Caitlin
7 Albert had left your house about 12:15 a.m., correct?

8 A No.

9 Q You didn't say that?

10 A I did not.

11 MR. JACKSON: If I may have just a moment,
12 Your Honor?

13 THE COURT: Yes.

14 MR. JACKSON: May I approach, Your Honor?

15 THE COURT: Yes.

16 MR. JACKSON: Thank you.

17 THE COURT: Show Mr. Lally.

18 MR. JACKSON: I'm sorry.

19 BY MR. JACKSON:

20 Q Sir, you don't have to sit and read the entire
21 thing. Right at the top of this Post-it, there is a
22 word that says "next." If you were to read that area,
23 the next few sentences? Let me know when you're
24 finished.

25 A (Witness complies.)

1 MR. JACKSON: May I approach?

2 THE COURT: Yes.

3 MR. JACKSON: Thank you.

4 BY MR. JACKSON:

5 Q Mr. Albert, did you have an opportunity to
6 review that portion of a report?

7 A I did.

8 Q Did that refresh your recollection about a
9 conversation that you had along with your wife with
10 Officer Lank?

11 A Yes.

12 Q Isn't it true that Officer Lank asked you,
13 asked you and your wife, who else was in the house that
14 night aside from the names already mentioned? And the
15 names mentioned were Brian Albert, Jr.; Caitlin Albert;
16 Julie Nagel and Brian Higgins, quote, "who is a friend
17 of Brian Albert, Sr.," end quote; is that right?

18 A That's what the report says, yes.

19 Q And then the report goes on to say (as read),
20 "They advised me that their daughter, Caitlin, left the
21 house around 12:15 a.m., when she was picked up by her
22 boyfriend, Tristin Morris," right?

23 A That's what the report says, yes.

24 Q So you think Officer Lank got it wrong?

25 A Perhaps, yes.

1 Q Okay. Did you say that Caitlin left about
2 12:15?

3 A No.

4 Q Did Nicole say in your presence that Caitlin
5 left about 12:15?

6 A She did not.

7 Q At any point, did Officer Lank ask you what
8 time Caitlin left?

9 A I don't recall him asking that. It was a very
10 chaotic morning, and I don't remember him saying that.

11 Q So in fact, if he wrote that sentence in the
12 report which you just read, he's just making that up?

13 MR. LALLY: Objection, Your Honor.

14 THE COURT: Sustained.

15 MR. JACKSON: I'll ask it a different way.

16 BY MR. JACKSON:

17 Q If that's what Officer Lank recalls, he's just
18 wrong, right?

19 A Yes.

20 Q Okay. Anything else that he's wrong about in
21 there?

22 A I didn't read the whole report.

23 Q At no point, isn't it true that at no point,
24 during that interview did you admit or mention that
25 Caitlin Albert had been at the house that night?

1 A I don't believe I did, no.

2 Q At no point during that interview did your
3 wife, Nicole, in your presence admit or mention that
4 Caitlin Albert was in the house that night?

5 A No.

6 Q So did both of you conveniently forget that
7 Colin was there?

8 MR. LALLY: Objection.

9 THE COURT: Sustained.

10 MR. JACKSON: I'll ask it a different way.

11 BY MR. JACKSON:

12 Q Did you forget that Colin had been there?

13 A No.

14 Q Is there a reason that you left his name out?

15 A Because he wasn't there. He left when we got
16 there. He wasn't there for the duration of the time
17 that we had that night.

18 Q Except for the fact that you just testified
19 that you never saw him leave, correct?

20 A Well, he said he was getting picked up, and
21 then he was gone. So I assumed he left.

22 Q People say a lot of things. But you didn't
23 see him leave and you didn't see him in the regular
24 floor of the house, according to you, correct?

25 A Right.

1 Q The ground floor of the house?

2 A Right. He was no longer in my house. So he
3 left.

4 Q Well, you didn't search the house, did you, at
5 that time?

6 A No. Right.

7 Q And you never saw him leave?

8 A I didn't physically see him leave, no.

9 Q You also gave a statement to Michael Proctor
10 later that morning, about noon? Maybe it was in the
11 afternoon, noon, 12:30, something like that?

12 A Are you asking --

13 Q On the 29th, you later -- after you spoke with
14 Officer Lank, you later were interviewed by Trooper
15 Michael Proctor over Jen McCabe's house. Do you
16 remember that?

17 A Yes.

18 Q Colin's name was never mentioned then, either?

19 A No, because Colin wasn't at the house for the
20 duration of the night.

21 Q So when they said who was in the house, you
22 talked about Brian Albert, Caitlin Albert?

23 A Yes.

24 Q Other folks in the house?

25 A Yes.

1 Q Julie Nagel?

2 A Yes. And there were other people in the house
3 prior to us arriving. I didn't mention them, either.

4 Q Who was that?

5 A There were some females, friends that were
6 over prior to our arrival.

7 Q But you never even saw them?

8 A No.

9 Q So you have no idea who was there and who
10 wasn't there before you got there?

11 A No. I know that there were people at the
12 house prior to me getting there.

13 Q Mr. Albert, the question that has been posed
14 to you by several officers was who did you see in your
15 home when you got there, correct?

16 MR. LALLY: Objection.

17 THE COURT: I'll allow it.

18 THE WITNESS: I don't believe that's how it
19 was asked, no.

20 BY MR. JACKSON:

21 Q But Colin's name was never mentioned, was left
22 out?

23 A I testified multiple times that Colin was
24 there when we arrived.

25 Q Oh, you did after the fact, right?

1 A Yes.

2 Q After you knew that the defense knew that
3 Colin was there?

4 MR. LALLY: Objection.

5 THE COURT: Sustained.

6 BY MR. JACKSON:

7 Q In your initial reports to the police, his
8 name was never mentioned, was it?

9 A I did not mention it, no.

10 Q And Nicole did not mention it in your
11 presence, did she?

12 A In my presence, no.

13 Q Let's talk about Caitlin Albert, your eldest.
14 You told Officer Lank that your daughter -- well,
15 according to Officer Lank -- let me rephrase the
16 question based on our colloquy back and forth.

17 According to Officer Lank, you're aware that
18 he wrote he was told that she was gone by 12:15,
19 correct?

20 A That's what he wrote in the report, yes.

21 Q If Caitlin was gone by 12:15, she would not
22 have been there when John and Karen arrived to the
23 house, correct, because they didn't arrive until 15
24 minutes later?

25 A But she was at the house. So that would be a

1 hypothetical.

2 Q Okay. Fine. Hypotheticals. Let me ask you a
3 hypothetical.

4 If, in fact, Caitlin was gone by 12:15, that
5 would mean, hypothetical, she would not have been there
6 when John and Karen arrived 15 minutes later?

7 MR. LALLY: Objection.

8 THE COURT: Sustained.

9 BY MR. JACKSON:

10 Q When you were interviewed by Officer Lank that
11 morning, other people were in the room, not just you and
12 Officer Lank, correct?

13 A Yes. I wouldn't consider that morning to be
14 an interview with Officer Lank.

15 Q More of a conversation?

16 A Yes.

17 Q During that conversation, Nicole was there?

18 A Yes.

19 Q And she was in earshot?

20 A Yes.

21 Q When she was involved in the conversation, you
22 were within earshot?

23 A Yes.

24 Q Brian, Jr. would have been within earshot?

25 A Brian, Jr. wasn't downstairs most of that

1 morning. So he may not have been.

2 Q But he was there for part of the morning?

3 A Yeah, but I'm not sure that he was there at
4 the time Lank, Officer Lank, was asking questions.

5 Q The fact of the matter is, notwithstanding
6 what Officer Lank wrote that you said about Caitlin
7 leaving at 12:15, she did not leave at 12:15; isn't that
8 right?

9 A She did not, no.

10 Q As a matter of fact, in truth, except for the
11 people who lived there, Caitlin was the very last person
12 to leave that location that morning, correct?

13 A I believe so, yes.

14 Q And she has admitted that she did not leave
15 until nearly 2:00 a.m., 1:45, correct?

16 MR. LALLY: Objection.

17 THE COURT: Sustained.

18 BY MR. JACKSON:

19 Q You're aware that she did not leave until 1:45
20 or thereafter; is that right?

21 A I believe that's around the time, yes.

22 Q Were you trying to cover for Caitlin so your
23 daughter would not be wrapped up in this investigation?

24 A No.

25 Q But, as a reminder, when you were spoken to by

1 the first two officers who discussed who was in the
2 house, you never mentioned Colin was even there,
3 correct?

4 MR. LALLY: Objection.

5 THE COURT: We've gone over that. Next
6 question, please. Sustained.

7 BY MR. JACKSON:

8 Q If Colin was gone, just like Caitlin was gone,
9 that would eliminate them from ever being at the house
10 at the same time as John O'Keefe and Karen Read, right?

11 MR. LALLY: Objection.

12 THE COURT: Sustained.

13 BY MR. JACKSON:

14 Q On January 29th about 11:30 or 12:00, we
15 talked about the fact that you were interviewed by
16 Michael Proctor at Jen McCabe's house, correct?

17 A Yes.

18 Q You knew at the time that the state police
19 were looking to interview Jennifer McCabe about her
20 understanding of what had happened the night before?

21 MR. LALLY: Objection.

22 THE COURT: Sustained.

23 BY MR. JACKSON:

24 Q You were notified that the state police were
25 going to interview Jen McCabe?

1 MR. LALLY: Objection.

2 THE COURT: I'll allow it. Were you notified
3 that?

4 THE WITNESS: No.

5 BY MR. JACKSON:

6 Q You knew the subject matter of an interview
7 with Jen McCabe was going to happen over -- the subject
8 matter the night before was going to happen over at
9 Jen McCabe's house. That's why you went there, right?

10 MR. LALLY: Objection.

11 THE WITNESS: No.

12 THE COURT: Overruled.

13 THE WITNESS: No.

14 BY MR. JACKSON:

15 Q Isn't it true that you knew you had been
16 notified or at least you believed that an interview with
17 Jen McCabe as part of an official police investigation
18 was going to occur at her house?

19 A Yes.

20 Q You were not asked by the police to join her,
21 correct?

22 A No.

23 Q You had no official reason to be at
24 Jen McCabe's house, correct?

25 A I don't know what you mean by "official

1 reason."

2 Q You were not working the investigation,
3 yourself?

4 A No.

5 Q You were a witness, correct?

6 A Right.

7 Q So you had no official reason to be at
8 Jen McCabe's house during an interview with Jen McCabe?

9 MR. LALLY: Objection.

10 THE COURT: No. I'll allow it. Can you
11 answer that, sir?

12 THE WITNESS: No.

13 BY MR. JACKSON:

14 Q But before she gave her statement, you made
15 sure that you were right there to monitor that interview
16 and exactly what was said, correct?

17 MR. LALLY: Objection.

18 THE COURT: Sustained.

19 Q Were you in her house when Jen McCabe was
20 interviewed by Michael Proctor?

21 A Her house, yes.

22 Q You had gone to her house, correct?

23 A Yes.

24 Q You went there before she gave the interview?

25 A Yes.

1 Q So you were there in her house during the
2 entirety of her interview, correct?

3 A I believe so, yes.

4 Q And, importantly, Jen McCabe knew that you
5 were in her house during that interview, correct?

6 A I assume she knew, yes.

7 Q I mean, you're in her house, after all.

8 A Yes.

9 Q I want to get back to 34 Fairview, if I could,
10 in the early morning hours of January 29th.

11 Brian Higgins directly followed you into the
12 house after you walked in, correct?

13 A Could you rephrase that?

14 Q You walked -- even though there was some
15 moving of cars, you were the first one to walk into the
16 house and Brian Higgins followed you?

17 A Yes.

18 Q All right. Nicole and Caitlin came in shortly
19 after that?

20 A I think Nicole and Caitlin probably came in
21 around the same time as me.

22 Q Did you make another drink --

23 A And then Brian Higgins.

24 Q Sorry. Did you make another drink once you
25 walked into the house?

1 A Did I make a drink?

2 Q Did you make a drink, grab a beer?

3 A Yes.

4 Q When I say "make a drink," did you get a
5 drink?

6 A Yes.

7 Q What drink did you get?

8 A I don't know. It probably just would have
9 been whatever was at the house. A beer or something.

10 Q Did Higgins have another drink?

11 A I don't know.

12 Q What did you and Brian Higgins do once you
13 were inside the house?

14 A Just kind of hung out, talked.

15 Q At any point, did you and Brian Higgins go
16 down to the basement?

17 A No. I don't remember going to the basement.

18 Q You don't remember going to the basement or
19 you didn't go to the basement?

20 A No. I didn't go to the basement.

21 Q Did Brian Higgins go to the basement?

22 A Not that I know of.

23 Q And you didn't go upstairs to the second
24 floor, did you?

25 A I think I did go upstairs, yes.

1 Q Isn't it true that Brian Higgins has never
2 been upstairs in your house?

3 A Prior to that night?

4 Q Ever, including that night, specifically.

5 A I don't think that's true, no.

6 Q You owned a dog at the time, correct?

7 A Yes.

8 Q A German Shepherd named Chloe?

9 A Yes.

10 Q You've described that dog as being not great
11 with strangers; isn't that true?

12 A I did describe it that way, yes.

13 Q You testified that, quote, "it started barking
14 because it realized that people were downstairs," end
15 quote, right?

16 A Yes.

17 Q Chloe had a penchant for barking when she
18 heard people, correct?

19 A No, not necessarily.

20 Q Well, she did that night?

21 A Yeah. I think she wanted to use the bathroom.

22 Q Well, that's not what you said in your
23 testimony. You said (as read), "It started barking
24 because it realized there were people downstairs,"
25 right?

1 A Right.

2 Q So your German Shepherd, probably a decent
3 guard dog, if she heard commotion and people, she would
4 bark?

5 MR. LALLY: Objection, Your Honor.

6 THE COURT: Sustained. You can ask it
7 differently.

8 BY MR. JACKSON:

9 Q Obviously, if Chloe hears commotion and
10 people, she's apt to bark? That's the only question.

11 A No.

12 Q So just that night, out of nowhere, the first
13 time ever, Chloe starts barking when people walked into
14 the house?

15 A No. It's not the first time ever, but she
16 didn't bark often.

17 Q Okay. But she did bark that night, right?

18 A Yes.

19 Q And the reason that you gave under oath for
20 why she started barking was because there were people
21 downstairs, milling about, right?

22 A Yes.

23 Q So in that instance on January 29th in the
24 early morning hours, she was barking because she heard
25 people?

1 A Well, I can't say why she was barking.

2 Q Well, you did say why she was barking.

3 A I let her out to use the bathroom. So I think
4 that's probably why.

5 Q Except your testimony was it started barking
6 because it realized there were people downstairs. Those
7 are your words, Mr. Albert, not mine.

8 A Okay.

9 Q Do you stand by those?

10 A Yes.

11 Q Okay. You ultimately did let Chloe out to go
12 to the bathroom, correct?

13 A Yes.

14 Q And then you allowed her to stay downstairs,
15 and you monitored her with the others who were in the
16 house; isn't that right?

17 A Yes.

18 Q As a matter of fact, you testified in that
19 state grand jury, the same April grand jury, April of
20 2022 (as read), "So I let it go out to the bathroom. I
21 let it back in. I kind of monitored it a little because
22 we usually don't have people over the house, and the
23 dog's not great with strangers. So I was just making
24 sure that the dog was all right with the people that
25 were over," end quote, correct?

1 A Yes.

2 Q So in fact, you did keep Chloe downstairs at
3 least for a period of time with people that were over,
4 right?

5 A Yes, for a few minutes.

6 Q Mr. Albert, after you learned that there were
7 questions being raised about John's injuries and dog
8 bites and scratches, in May of 2022 you got rid of that
9 dog, did you not?

10 MR. LALLY: Objection.

11 THE COURT: Sustained. You can ask it
12 differently.

13 BY MR. JACKSON:

14 Q At some point, your family got rid of Chloe?

15 A Chloe was rehomed in May.

16 Q We can use whatever words we want to: rehomed,
17 rehoused, whatever. But you got rid of her. She's no
18 longer part of the Albert family, right?

19 MR. LALLY: Objection.

20 THE COURT: I will allow that.

21 THE WITNESS: Right.

22 BY MR. JACKSON:

23 Q When did you get rid of her?

24 A So Chloe was rehomed in I believe May.

25 Q Of 2022?

1 A Of 2022.

2 Q Just months after the incident that we are
3 discussing?

4 A Well, after it was involved -- she was
5 involved in a dog fight with another dog out front.

6 Q Right. But that's also after the incident
7 that we are discussing?

8 A Yes, in May.

9 Q That's a family pet that you had had for six
10 years or seven years?

11 A Approximately six or seven years.

12 Q And your explanation just now for having
13 gotten rid of that dog is because it bit another dog and
14 ultimately sent two women to the hospital, correct?

15 A I believe two women went to the hospital, yes.

16 Q But you took no action to get rid of Chloe
17 until after you knew that serious questions were being
18 raised about John O'Keefe's injuries, correct?

19 MR. LALLY: Objection.

20 THE COURT: Sustained.

21 BY MR. JACKSON:

22 Q At some point, you did realize that there were
23 questions being raised about John O'Keefe's injuries on
24 his arm, correct?

25 MR. LALLY: Objection.

1 THE COURT: I will allow that. Did you
2 realize that?

3 THE WITNESS: I heard some talk about it, yes.

4 BY MR. JACKSON:

5 Q As of January of 2022, John O'Keefe had never
6 been in your house, had he?

7 A John O'Keefe was never in my house before or
8 after that date.

9 Q Certainly John O'Keefe, you would agree with
10 me, he would count, were he in your house, he would
11 count, as a stranger to Chloe, wouldn't he? He'd never
12 met her before?

13 A Hypothetical, yes.

14 Q I want to ask you a couple of questions about
15 your house. Where are -- I know there are multiple
16 bedrooms. Are all the bedrooms on the top floor?

17 A Yes.

18 Q How many bedrooms?

19 A Five.

20 Q As we are looking at your house from the
21 street, looking at your house, are your bedroom windows,
22 your and Nicole's bedroom windows, visible from the
23 street?

24 A Yes.

25 Q Which windows would they be?

1 A If you were facing the house, they would be
2 the far left corner.

3 Q Upper or lower?

4 A Upper.

5 Q Upper left corner?

6 A Yes.

7 Q How many windows? Two or three, sir?

8 A Two.

9 MR. JACKSON: Your Honor, with the Court's
10 permission, could I display Exhibit 66 to the
11 witness?

12 THE COURT: Okay.

13 BY MR. JACKSON:

14 Q Do you see what is displayed on that
15 television?

16 A Yes.

17 Q What does that appear to be to you?

18 A The house at 34 Fairview Road.

19 Q Understanding this is a graphic
20 representation, not a photograph, do you see the windows
21 that you just described servicing your bedroom on that
22 graphic?

23 A Yes.

24 Q Are they right there?

25 A Yes.

1 Q Okay. Upper left two windows, correct?

2 A Yes.

3 Q And those overlook what part of the lawn?

4 A The front lawn.

5 Q The front lawn, toward the left side of the
6 house, not toward the driveway, correct?

7 A Right. I mean, it's the whole front lawn, but
8 yeah.

9 Q But toward the left side of the house?

10 A The windows are, yes. You asked about the
11 view.

12 Q Right.

13 A So the view is the whole front yard.

14 Q I'm just trying to make the spoken record as
15 clear as possible.

16 A Right.

17 Q They're on the left side of the house.

18 A Yes.

19 Q And they overlook directly, they directly
20 overlook this portion of the lawn on the left side of
21 the lawn, correct?

22 A Yes.

23 Q Furthest from the driveway?

24 A Yes.

25 MR. JACKSON: We can take that down. Thank

1 you.

2 Q Where's your bed or where was your bed inside
3 that room as relates to the windows?

4 A I'm just trying to think of how to describe
5 it. So the bed would be in the middle of the bedroom.

6 Q That was a bad question on my part because we
7 haven't been there. Let's do it this way: How many
8 feet from the windows would the closest part of your bed
9 be to those windows?

10 A Maybe five feet. Six feet.

11 Q You indicated that Nicole came to bed about
12 2:00 o'clock in the morning?

13 A Yes.

14 Q Where was the dog?

15 A The dog was in my room.

16 Q And she was sleeping on a mat in your room?

17 A Yes.

18 Q And that mat is also about six feet from the
19 windows?

20 A Yes.

21 Q Six feet being from me to Ms. Little, maybe
22 this far?

23 A It could be, yes. Maybe a little further, but
24 yes.

25 Q Maybe this far?

1 A Maybe.

2 Q Okay. It's a relatively quiet street
3 generally on Fairview?

4 A Yes.

5 Q Not an enormous amount of through traffic?

6 A No.

7 Q It's not a busy freeway or a highway, correct?

8 A No.

9 Q Not an especially noisy street?

10 A The street, no.

11 Q Especially at 6:00 a.m. on a Saturday morning,
12 right?

13 A Right.

14 Q Where were you at 6:03 on the morning of
15 January 29th, 2022?

16 A I was sleeping in my room.

17 Q Six feet from that window?

18 A Yes.

19 Q Was Nicole in bed with you?

20 A Yes.

21 Q Had you taken any medication the night before?

22 A No.

23 Q Were you on any sedatives?

24 A No.

25 Q Sleeping pills?

1 A No.

2 Q Were you wearing a sleep apnea machine?

3 A No.

4 Q Were you wearing an eye mask?

5 A No.

6 Q Were you wearing earplugs?

7 A No.

8 Q You shortly thereafter became aware that six
9 emergency vehicles, including a fire engine, police
10 cruisers and unmarked police vehicles, a civilian SUV,
11 were all parked in front of your house that morning,
12 correct?

13 A I'm not aware of what type of vehicles were
14 parked there, no.

15 Q You've seen photographs since this incident?

16 A the vehicles out front?

17 Q Right.

18 A No.

19 Q Are you aware that all of those vehicles had
20 their engines running?

21 A No.

22 Q Are you aware that all the emergency vehicles,
23 at least, had their lights on, flashing lights?

24 A No.

25 Q Were you aware that there were a number of

1 first responders outside their vehicles, traipsing
2 around your lawn?

3 A Was I aware?

4 Q Were you aware at the time?

5 A No.

6 Q Were you aware that there were emergency
7 responders, first responders, who were talking to each
8 other over the din, the wind and the snow to communicate
9 with each other?

10 A No.

11 Q Are you aware that there were three women on
12 your lawn at one point?

13 A Just only after the fact.

14 Q And at least one of those women was screaming
15 to the top of her lungs at 6:03?

16 A No.

17 Q Again, your German Shepherd was six feet from
18 the window, correct?

19 A I don't know that for sure.

20 Q Well, that's where her mat was.

21 A Well, that's doesn't mean that's where she
22 always is. She also sleeps in the closet area
23 sometimes.

24 Q Oh, so now Chloe is in the closet?

25 A I didn't say she was in the closet. I said

1 she sleeps in the closet area sometimes.

2 Q Was she sleeping in the closet area that
3 morning?

4 A I don't remember.

5 Q The likelihood is she was sleeping on that mat
6 five or six feet from that window, correct?

7 MR. LALLY: Objection.

8 THE WITNESS: I don't know.

9 THE COURT: Sustained. Sustained.

10 BY MR. JACKSON:

11 Q And your explanation -- and, by the way, and
12 we've already talked about this, earlier that day,
13 you've already indicated she was barking because she
14 heard people and noises downstairs when you guys came in
15 the house?

16 A Yes.

17 Q And your explanation is that you and Nicole
18 and Chloe, the German Shepherd, all slept through the
19 entirety of that commotion on your front lawn?

20 A Yes.

21 Q To be clear, you are a trained first
22 responder?

23 A Yes.

24 Q Yet during that entire event after you were
25 awakened, all that chaos on your front lawn, you never

1 came out of your house to assist or investigate in any
2 manner whatsoever, did you, Mr. Albert?

3 A Once I was awakened?

4 Q Correct.

5 A No.

6 Q We've talked about this a little bit, but I
7 want to ask you a couple of other questions about the
8 layout of the house. Your house is sitting on top of a
9 basement, correct?

10 A Yes.

11 Q Or was at the time. Describe how you get to
12 the basement from inside the house if you come in the
13 front door? And when I say -- I'm sorry to do this. I
14 don't mean to interrupt you.

15 There's two front doors that you go in,
16 correct?

17 A Yes.

18 Q For purposes of my question, Mr. Albert, I'm
19 going to talk about the one that's right in front of
20 you, the obvious one, as the front door and the one to
21 the right of it as you're looking at the house as the
22 side door. Okay?

23 A Okay.

24 Q Because I don't know how else to describe it.
25 If you come in the front door, describe for the jurors

1 where is the basement door as compared to that?

2 A So you walk straight ahead. You pass the
3 kitchen/dining room area opening on your right-hand
4 side. And there is a door on the left.

5 Q How many paces -- the door opens. How many
6 paces to walk over and grab that door handle?

7 A I'm not sure. Maybe 10.

8 Q Ten full paces?

9 A Maybe, yeah.

10 Q So --

11 A Maybe eight.

12 Q Mr. Albert, it's about four long steps,
13 correct?

14 A Well, I don't know. You asked paces. So --

15 Q Right.

16 A You know, six feet.

17 Q Six to eight feet, maybe.

18 A Got it. What was the basement used for in
19 January of 2022?

20 A So the basement had a weight room in one of
21 the rooms and the other room was nothing at the time.
22 It had been damaged, water damage due to an overflown
23 toilet.

24 Q So part of the flooring had been ripped up?

25 A Yes.

1 Q And that opened up some slab concrete
2 downstairs?

3 A Yes.

4 Q There was also some plywood downstairs?

5 A Yes.

6 Q There were a couple of mats where the actual
7 weights were so they were not slamming down onto
8 concrete?

9 A Yes.

10 Q But there was a good amount of that floor that
11 was just exposed concrete?

12 A Yes.

13 Q The workout equipment would include things
14 like, what, barbells, dumbbells?

15 A Yes.

16 Q Heavy weights?

17 A Yes.

18 Q Heavy bars?

19 A Yes.

20 Q Made from metal?

21 A Yes.

22 Q Once you're down in the basement -- by the
23 way, there's two flights that you go down at angles to
24 get to the basement, a series of steps, a landing, take
25 a left, another series of steps and you stand on the

1 basement?

2 A Yes. Not a long staircase. A very small one.

3 Q Right. I mean it's narrow and tight. But, in
4 other words, you don't just walk straight down a
5 staircase. You go down to a landing, turn left?

6 A It turns a little.

7 Q You go down, turn left again and now you're in
8 the basement?

9 A Yes.

10 Q If you wanted to move something large or heavy
11 out of that basement without having to go through the
12 house, could you do that?

13 MR. LALLY: Objection.

14 THE COURT: I'll allow it.

15 THE WITNESS: Could you rephrase the question?

16 BY MR. JACKSON:

17 Q I'll say it again. If you wanted to move
18 something large or heavy out of that basement without
19 having to go through the main house, could you do that?

20 A Yes. And it would depend what it was,
21 obviously, how big it was or --

22 Q How would you do that?

23 A There is a bulkhead door you could use.

24 Q Got it. Where does that bulkhead door come
25 out of?

1 A It comes out to the backyard right at the
2 kitchen area. You can see it from a kitchen.

3 Q And right to the left of that is the side
4 fence?

5 A Yes.

6 Q And directly through that side fence is the
7 front yard?

8 A Yes.

9 Q The same side of the front yard as
10 John O'Keefe's body was found?

11 A Yes.

12 MR. JACKSON: Your Honor, I would ask at this
13 point to mark a video. If I may have just a
14 moment, Your Honor?

15 THE COURT: Yes. Mr. Jackson, would you like
16 to take a morning recess?

17 MR. JACKSON: That would be great. It's a
18 good time. Yes. Thank you, Your Honor.

19 THE COURT: All right, folks. Why don't we
20 take about 20 minutes.

21 (Whereupon, the jury is escorted from the courtroom
22 at 10:35 a.m. for the morning recess.)

23 THE COURT: Do you anticipate having it?

24 MR. JACKSON: Yes.

25 (Whereupon, there was a brief recess taken.)

1 (Court resumes at 11:00 a.m.)

2 (Defendant present. Jury present.)

3 THE COURT: All right. Are you all squared
4 away?

5 MR. YANNETTI: We are.

6 MR. JACKSON: Thank you.

7 BY MR. JACKSON:

8 Q Mr. Albert, did you speak with anybody at the
9 break about your testimony?

10 A Just my attorney.

11 MR. JACKSON: May I approach?

12 THE COURT: Yes

13 BY MR. JACKSON:

14 Q Take a look at this photograph, Mr. Albert,
15 and, if you could, please, tell me if you recognize
16 what's depicted in that photograph.

17 A Yes. It's the bulkhead stairway.

18 Q Is that the stairway that you earlier
19 described for the jurors as servicing the basement going
20 into the backyard?

21 A Yes.

22 MR. JACKSON: May I approach?

23 THE COURT: Yes.

24 MR. JACKSON: I would ask to have this marked
25 as the next in order.

1 THE COURT: Mr. Lally, any objections?

2 MR. LALLY: No, Your Honor.

3 THE COURT REPORTER: That will be Exhibit 68,
4 Your Honor.

5 (Whereupon, photograph was entered and marked
6 Exhibit No. 68 in Evidence.)

7 MR. JACKSON: May I?

8 THE COURT: Yes.

9 MR. JACKSON: Move to publish, Your Honor.

10 THE COURT: Okay.

11 BY MR. JACKSON:

12 Q Do you see what's depicted on the television
13 screen?

14 A Yes.

15 Q Does that appear to be the same as what you're
16 holding right there, that exhibit?

17 A It does, yes.

18 Q I'm going to direct your attention, if I
19 could, to the lower left portion of this photograph,
20 right there. Do you see that? Can you tell what that
21 is?

22 A I can't.

23 Q Let me highlight one more time. Right there.
24 Maybe it's easier if you look on your photograph.

25 A Are you referring to the doorknob?

1 Q That's right.

2 A I've got it here. Yes.

3 Q I'm sorry. It's sort of hidden on that
4 photograph. So I apologize.

5 Is that the door that swings open or closed to
6 close off the basement?

7 A Yes.

8 Q Then if you open that door, it's in the open
9 position now, correct?

10 A Yes.

11 Q So the photographer is standing in the
12 basement, looking toward the doorway, correct?

13 A Yes.

14 Q Then you climb seven or eight stairs?

15 A Yes.

16 Q And that bulkhead door, which is where all the
17 light is emanating, how does that open?

18 A So the bulkhead door opens straight up.

19 Q Okay. At least in that photograph, it was
20 hinged towards the house and it would open up like, I
21 don't know, a sandwich or something?

22 A It opened straight up to the bay windows that
23 are in the kitchen.

24 Q Okay. Got it.

25 MR. JACKSON: Okay. That's all I need from

1 that photograph.

2 Your Honor, I have a flash drive with a video
3 on it. I'd ask that this be marked as next in
4 order with the Court's permission?

5 MR. LALLY: Assuming it's the same one, no
6 objection.

7 MR. JACKSON: It's the same one.

8 THE COURT REPORTER: That will be Exhibit 69,
9 Your Honor.

10 (Whereupon, video of bulkhead on flash drive was
11 entered and marked Exhibit No. 69 in Evidence.)

12 BY MR. JACKSON:

13 Q Mr. Albert, I want to ask you to take a look
14 in just a second at a video and then describe if you
15 recognize what is in that video. I'll probably play
16 maybe five or 10 seconds of it and then pause it if
17 that's okay.

18 A Okay.

19 MR. JACKSON: With the Court's permission?

20 THE COURT: Yes.

21 (Whereupon, the video is played.)

22 MR. JACKSON: Pause.

23 (Whereupon, the video is paused.)

24 Q Do you recognize what's depicted in that video
25 at least up to that point?

1 A No.

2 Q Okay. Does that look like your basement door,
3 although the bulkhead doors have been replaced and are
4 different?

5 A The whole thing looks different to me.

6 MR. JACKSON: Let's play the video.

7 (Whereupon, the video is played.)

8 MR. JACKSON: Pause.

9 (Whereupon, the video is paused.)

10 Q Now do you recognize what is depicted in the
11 video?

12 A Yes.

13 Q What is that?

14 A So that is my backyard, was my backyard.

15 Q Okay. And what area is over to the left, over
16 here?

17 A That is a gate.

18 Q Okay. And what does that gate open up to?

19 A To the front yard.

20 Q So the area that we are looking at right now
21 where the photographer is standing is the backyard?

22 A Yes.

23 Q Now, having seen that, notwithstanding the way
24 the bulkhead doors open, now do you recognize what was
25 depicted at the beginning of the video which was that

1 staircase?

2 A Yes. The downstairs door, the door, itself,
3 the wooden door, itself, also looks different.

4 Q Okay. But it is --

5 A But it is the stairway, yes.

6 Q Going into the basement?

7 A Yes.

8 Q Or coming out of the basement?

9 A Yes.

10 Q So, in other words, another way to put that is
11 that represented the ingress and egress through the
12 bulkhead to the basement?

13 A Yes.

14 MR. JACKSON: Okay. Let's go ahead and play
15 this.

16 (Whereupon, the video is played.)

17 MR. JACKSON: Pause.

18 (Whereupon, the video is paused.)

19 Q Did you recognize what was depicted in the
20 video -- we can bring the lights up. Thank you. Thank
21 you. Thank you, Your Honor.

22 Did you recognize what was depicted in the
23 video as it continued to play?

24 A Yes.

25 Q Describe that for the jurors, please.

1 A It looked like the video was from walking from
2 the backyard towards the front yard.

3 Q So the video started at the bulkhead door,
4 turned toward the fence, went through the fence and
5 right up toward the flagpole, correct?

6 A Yes.

7 Q Is that an accurate representation of the
8 layout of the house when you lived there on January 28-
9 29th, 2022?

10 A Yes.

11 Q With the exception of the bulkhead door having
12 been replaced and maybe the basement door?

13 A Yes.

14 Q By the way, the 34 Fairview house had been in
15 your family at that time, in 2022, for two generations?

16 A My parents built the house in the late '70s.
17 '79, maybe.

18 Q So if your parents are one generation and you
19 and your family are another generation, two generations?

20 A Right.

21 Q Nearly or maybe actually a little more than 50
22 years, half a century?

23 A That what?

24 Q That it was the Albert home?

25 A Yes.

1 Q The fact is you listed that house for sale for
2 the first time ever in November of 2022, correct?

3 A That is the time we listed it, yes.

4 Q Just months after John O'Keefe was found on
5 your lawn?

6 MR. LALLY: Objection.

7 THE COURT: Sustained.

8 BY MR. JACKSON:

9 Q Mr. Albert, is that timing, according to you,
10 a coincidence?

11 A Is what?

12 Q Is that timing a coincidence?

13 A It's not the timing, actually. We contacted
14 the realtor in 2021 and finally listed it in 2022. So
15 that would be pre-incident.

16 Q So in other words, the listing coming nine
17 months after John O'Keefe was found dead on your lawn or
18 dying on your lawn, that's just coincidence? You had
19 this in place long before that? Is that what you're
20 saying?

21 MR. LALLY: Objection.

22 THE COURT: So I'll sustain the question. You
23 can ask it differently.

24 BY MR. JACKSON:

25 Q All I'm asking is the timing, November of

1 2022, listing that house for sale for the first time in
2 November, that, in your mind, is just a coincidence?

3 A It's not a coincidence because we started
4 trying to look into selling the house in 2021, which was
5 a few months prior to the incident.

6 Q On January 28th, 2022, you were still an
7 active Boston police officer, correct?

8 A Yes.

9 Q What was your job title in January of 2022?

10 A Sergeant detective.

11 Q That means you not only respond to incidents,
12 you actually conduct investigations as a detective,
13 correct?

14 A Yes. Primarily fugitive investigations.

15 Q You have additional training in order to hold
16 the title and hold the position as a detective; is that
17 right?

18 A Yes.

19 Q Not just a regular patrol officer. You have
20 to have special training to get to the rank of
21 detective; is that right?

22 A Yes.

23 Q As a sergeant detective, that's above a
24 regular detective, indeed, because you're a supervising
25 detective; is that right?

1 A Yes.

2 Q You have experience and training in order to
3 hold that position as a supervisor in the detective
4 spot, as well?

5 A Yes. There are civil service tests for the
6 rank, but yes.

7 Q And you've investigated crimes, I mean, I'm
8 guessing, just a ton of different crimes, including
9 assaults, manslaughters, homicides, kidnappings, things
10 of that nature?

11 A No.

12 Q You've never investigated anything like that?

13 A No.

14 Q So what's the parameters of your investigative
15 skills as you held that title of sergeant detective?

16 A So my parameters were investigating fugitive
17 investigations. That was my specialty, I guess you
18 could say.

19 Q So you responded, obviously, to countless
20 incidences and scenes as both a patrol officer as well
21 as a detective?

22 A Yes.

23 Q You've supervised the investigation of at
24 least the fugitive type of crimes, correct?

25 A Yes.

1 Q Fugitives trying to thwart investigators to
2 try to find them, right?

3 A Yes.

4 Q I mean, that's the whole -- it's the cat-and-
5 mouse thing, right?

6 A Right.

7 Q You being the cat, correct, trying to find the
8 mouse?

9 A Sometimes. Yes.

10 Q You're also trained in techniques, obviously,
11 any detective would be trained in techniques that
12 culprits might use or suspects might use to sort of
13 cover up investigations, I'm sorry, to cover up crimes
14 to thwart investigations, correct?

15 MR. LALLY: Objection.

16 THE COURT: Do you have that training, sir?

17 THE WITNESS: No.

18 BY MR. JACKSON:

19 Q So in all of your training, 30 years as a
20 Boston police officer and as a sergeant detective, you
21 don't have any training in what techniques criminals
22 might use to try to cover up their conduct?

23 A No. I've never gone to a training for
24 criminals to cover up conduct. No.

25 Q You've never been trained in the fact that, I

1 don't know, somebody might want to clean up blood at a
2 scene?

3 A No.

4 MR. LALLY: Objection.

5 THE COURT: I'll let the answer stand.

6 BY MR. JACKSON:

7 Q What about sanitizing a location?

8 MR. LALLY: Objection.

9 THE COURT: I'll allow it.

10 THE WITNESS: No.

11 BY MR. JACKSON:

12 Q What about getting rid of electronic data?

13 You've got to have training in that.

14 A No.

15 Q In other words, the fugitives that you trace
16 down and try to find, you don't try to utilize
17 electronic data to go after them?

18 A Sometimes we do, but I don't have any training
19 in it, per se.

20 Q I mean, things like GPS data and phone calls
21 and text messages and communications and things of that
22 nature, obviously, right?

23 A Yes. Yes.

24 Q Clearly. These are all things, at least those
25 things, are things if you didn't have formal training,

1 you got on-the-job training and just have common sense
2 about how to go after these type of -- this type of
3 evidence, correct?

4 A Yes.

5 Q Sir, you had an iPhone with a number ending in
6 0888 back in January of 2022, did you not?

7 A Yes.

8 Q How many years did you have that iPhone as of
9 January 28th, 2022?

10 A Several years. I'm not sure how many, but
11 multiple years.

12 Q And, Mr. Albert, you were notified by the
13 Commonwealth that on September 23rd, 2022, in the fall
14 of 2022, a judge specifically ordered that you were to
15 preserve that phone and all of its data, correct?

16 MR. LALLY: Objection, Your Honor.

17 THE COURT: I'll see counsel at sidebar.

18 Jurors, feel free to stand up if you'd like.

19 (Whereupon, there was a sidebar conference as
20 follows:)

21 THE COURT: So the nature of the objection?

22 MR. LALLY: Your Honor, again, I think it's
23 relevancy and hearsay. That's all.

24 MR. JACKSON: It goes to his state of mind,
25 Your Honor. The Commonwealth actually was the

1 entity that gave him notice that he was not to get
2 rid of his phone or any of its electronic data.
3 His state of mind and do so anyway, not
4 withstanding that notice is highly relevant. He's
5 been questioned --

6 THE COURT: Is he going to have to talk about
7 he did this with advice or consent of his lawyer?

8 MR. JACKSON: I have no information about
9 that. I can tell the Court he's testified to this
10 before and he never mentioned anything about that.

11 THE COURT: But I'm wondering if that's part
12 of it. I know he didn't mention it before, but I'm
13 wondering if that's part of it. He's got a lawyer
14 here.

15 MR. LALLY: I don't know.

16 MR. JACKSON: I would maneuver around that.
17 If he says, I had a conversation with my lawyer,
18 I'd say, don't tell us anything that your lawyer
19 said. It's not up to his lawyer to thwart a
20 judicial order.

21 THE COURT: You know what? I want a short
22 voir dire on this.

23 MR. JACKSON: Okay.

24 THE COURT: And we can bring his counsel in if
25 he's here.

1 MR. JACKSON: Can we wait until he invokes his
2 counsel? I don't think he's going to.

3 THE COURT: Let's have a voir dire on this.
4 I'm going to send the jury out. But that's the
5 issue on this.

6 MR. JACKSON: Okay.

7 (Whereupon, the sidebar conference concluded.)

8 THE COURT: Jurors, we are going to send you
9 back to the jury room for a few minutes.

10 (Whereupon, the jury is escorted from the courtroom
11 for a brief recess.)

12 THE COURT: And I am going to see if his
13 counsel is here. He has a right to be present.

14 (Whereupon, a brief recess is taken.)

15 (Court resumes.)

16 (Defendant present. Jury not present.)

17 THE COURT: All right. So, Mr. Jackson, if
18 you want to voir dire?

19 MR. JACKSON: Thank you, Your Honor.

20 VOIR DIRE EXAMINATION

21 BRIAN ALBERT, SR.

22 BY MR. JACKSON:

23 Q Mr. Albert, you are currently represented by
24 Mr. Henning?

25 A Yes.

1 Q Seated behind me? The gentleman in the gray
2 suit?

3 A Yes.

4 Q Correct?

5 A Yes.

6 Q Without telling me anything you've ever
7 communicated with him, when did you hire him as your
8 lawyer?

9 A I'm not exactly sure of the date.

10 Q Give me a time frame. Let's see if we can
11 narrow it down.

12 A 2022. I'm just not sure of the exact date or
13 even a month.

14 Q The end of 2022?

15 A I'm not sure. I believe prior to some of the
16 other testimony that I gave. So prior to --

17 Q Prior to April of 2022 at the state grand
18 jury?

19 A No. Prior to the other testimony.

20 Q Okay. That was in June of 2023. That is my
21 question. Did you hire Mr. Henning in 2023 in
22 anticipation of giving testimony in June of 2023?

23 A I'm not sure of the exact date. I believe it
24 was maybe the end of '22. I'm not sure.

25 Q Did you get a subpoena for the other hearing?

1 A I did.

2 Q Okay. Did you hire Mr. Henning after you got
3 that subpoena?

4 A I can't say for -- I believe so. Right around
5 that time, yes.

6 Q Okay.

7 A I'm just trying to remember the time, and I
8 can't remember it.

9 Q So you did not hire --

10 MR. JACKSON: Well, Your Honor, I think that
11 answers the question. He did not represent him
12 in 20 --

13 THE COURT: I will see you at sidebar about
14 the extent of the inquiry.

15 (Whereupon, there was a sidebar conference as
16 follows:)

17 THE COURT: Just so we can complete a record.
18 So if you put the dates on and your concerns -- I'm
19 have a concern about a Fifth Amendment issue. He's
20 got a lawyer, if he's going to sit here and say, I
21 was told I had to keep my phone and I didn't do it.
22 So let's lay out the dates and have a more complete
23 record.

24 MR. JACKSON: Yes, Your Honor. The dates as I
25 know them is the subpoenas went out for the -- I'm

1 going to continue to call it "the other grand
2 jury."

3 THE COURT: I think we should call it "another
4 proceeding." And then that will differentiate it
5 with the jurors, as well. I think that was my
6 original ruling on the motions.

7 MR. JACKSON: Okay. The other proceeding,
8 subpoenas went out in the spring of 2023, maybe the
9 late spring of 2023, at which point many of the
10 individuals, again, giving them lawyers, they did
11 not have lawyers that I know of in April of 2022
12 when they testified with Mr. Lally at the state
13 court grand jury.

14 This particular incident, this particular
15 notice was signed by Judge Krupp on September 23rd,
16 2022. And I believe his testimony is going to be
17 something along the lines of toward the end of that
18 month, without a specific date, he got rid of his
19 phone in September of '22, well before he would
20 have had any opportunity to or reason to hire
21 Mr. Henning.

22 THE COURT: Okay. So it wouldn't have been
23 after consulting counsel. But, there is still the
24 Fifth Amendment issue now, right, not a court
25 order.

1 MR. JACKSON: I agree.

2 THE COURT: So I just -- I'd like it if you
3 intend to do that question, I'd like you to do that
4 for purposes of voir dire.

5 MR. JACKSON: Okay.

6 THE COURT: Just in case his lawyer says he
7 should take the Fifth.

8 MR. JACKSON: Understood.

9 THE COURT: All right.

10 (Whereupon, the sidebar conference concluded.)

11 MR. JACKSON: May I, Your Honor?

12 THE COURT: Yes.

13 MR. JACKSON: Thank you.

14 BY MR. JACKSON:

15 Q You had received -- and I want to draw your
16 attention to 2023 now. I'm sorry. Now I'm doing it.
17 The fall of 2022, September of 2022.

18 A Yes.

19 Q Did you receive a notice on Commonwealth
20 letterhead indicating that you were not to destroy or in
21 any way manipulate any data on your cell phone, destroy
22 the phone, itself, or to manipulate or destroy any data
23 on that cell phone?

24 A I do not remember getting that letter. No.

25 MR. JACKSON: I am going to read this for the

1 record, Your Honor, if I may, with the Court's
2 permission.

3 THE COURT: Yes.

4 BY MR. JACKSON:

5 Q Did you receive a letter that said, in essence
6 -- not even in essence, it should be quoted -- as the
7 following: (As read), Quote, "You, Mr. Albert, are
8 hereby notified that the defense in the case of
9 Commonwealth versus Karen Read, Norfolk Superior Court
10 Criminal Case No. 22-117 has filed a motion pursuant to
11 Mass. R. Crim. P. 17 for the production of any cell
12 phones that you used between January 28th, 2022 and
13 February 28th, 2022 and/or any data associated with
14 those cell phones.

15 "The hearing on Ms. Read's motion will be held
16 on October 3, 2022 at 2:00 p.m. in Courtroom 1 of the
17 Norfolk Superior Court. You may be heard on the motion
18 at that time. You are hereby placed on notice that
19 these cell phones are the subject of pending litigation
20 and you must not alter, delete, destroy or in any way
21 manipulate any of this electronic data associated with
22 the cell phones at issue," period, end quote.

23 Did you receive a notice from the Commonwealth
24 with that language?

25 A I don't remember receiving that document, no.

1 Q Were you told in any other capacity that you
2 were not to get rid of or delete your cell phone, in
3 other words, preserve your phone?

4 A Subsequent to me upgrading my phone, I spoke
5 with the D.A.'s office. So after that, they told me via
6 phone call that that was the case.

7 Q So your testimony is you never received the
8 notice that I just read but you did talk to the D.A. and
9 he told you to preserve -- you were on notice that you
10 were to preserve your phone?

11 A After.

12 Q I know you want to say that, Mr. Albert. My
13 question is, did you have the conversation with
14 Mr. Lally?

15 A Yes.

16 Q When was that conversation, sir?

17 A So I don't have the exact date of the
18 conversation. I'm not sure.

19 Q Who did you talk to on the phone exactly? Was
20 it Mr. Lally, alone, or was it a conference call.

21 A It was a conference call.

22 Q Who else was on that conference call?

23 A I believe Steve Nelson and other witnesses in
24 the case were on the conversation call.

25 Q Can you name those witnesses for us, please?

1 A I believe it was Brian Higgins. I believe
2 Jen McCabe, Matt McCabe, and maybe somebody else. But I
3 can't recall.

4 Q Who initiated that conference call?

5 A I believe it was somebody in the D.A.'s
6 office. So either Mr. Lally or Steve Nelson. Somebody
7 like that.

8 Q Did everybody just call in to a central number
9 or a conference line?

10 A Yes.

11 Q And what exactly did Mr. Lally say to you
12 during the course of that conversation about preserving
13 your phone?

14 A During the conversation, Mr. Lally said that
15 there was -- that the defense had filed a motion to ask
16 for the phones to be preserved.

17 Q And anything else?

18 A That's what I remember him saying.

19 Q Did you volunteer that, oh, my goodness, I
20 just upgraded my phone last week conveniently. I don't
21 have that phone anymore?

22 A No.

23 Q You didn't say that to Mr. Lally?

24 A No.

25 Q You just took the information that he gave you

1 and hung up the phone and went about your business?

2 A Yes.

3 Q Without notifying him that the very phone that
4 he had just ordered you to preserve had just been
5 destroyed days earlier?

6 A No. The phone wasn't destroyed. I upgraded
7 the phone.

8 Q The data was destroyed, sir, correct?

9 A I did not destroy any data on any phone.

10 Q Mr. Albert --

11 A I upgraded my --

12 Q -- when you upgrade a phone, you know that the
13 phone is set back to factory reset before your new phone
14 is handed to you, correct? It happens every time?

15 A I don't know that.

16 Q So if you have personal texts with your
17 doctor, personal communications with Mr. Henning, your
18 lawyer, you're just going to a pimply faced kid at Best
19 Buy and say, here's my phone? You know that data is
20 destroyed when you upgrade your phone, right?

21 A I think some things come over, across.
22 Contacts, things like that. So I don't know that for
23 sure.

24 Q You can back up your data, sir, but the phone
25 data is destroyed for all purposes. It's factory reset,

1 correct?

2 A I don't know that.

3 Q How long have you had a phone, an iPhone?

4 A Years.

5 Q How many times have you upgraded your iPhone?

6 A Multiple times.

7 Q Every single time you upgraded, you know that
8 the phone prior to the date is destroyed on it, correct?

9 A Usually my contacts come over and my photos
10 come over. So --

11 Q Sir, that's a backup.

12 A No. I don't have -- I don't think I have that
13 on backup, but okay.

14 Q Irrespective, you didn't tell Mr. Lally that
15 you had gotten rid of that phone?

16 A I was not asked that and I didn't tell him
17 that.

18 Q I see. You felt like if you weren't asked
19 that, you didn't need to volunteer it, even though the
20 conference call was specifically about preserving your
21 phone pursuant to a judge's order, correct?

22 A What was the question?

23 Q You didn't offer to Mr. Lally that you had
24 gotten rid of the very phone that he was telling you had
25 to be preserved due to a judge's order?

1 A I did not.

2 Q And you didn't seek any advice from -- I'm not
3 asking you for the communications. You did not seek any
4 advice from counsel at that time for those purposes?

5 A I don't believe I did, no.

6 MR. LALLY: May I have just a moment, Your
7 Honor?

8 THE COURT: Sure.

9 BY MR. JACKSON:

10 Q At some point, you indicated, Mr. Albert, at
11 another proceeding under oath in relation to a
12 conversation that you had with Brian Higgins about your
13 phone, quote (as read), "I don't recall saying I was
14 going to get rid of my personal phone to Brian Higgins.
15 I may have said that. You know, there's personal stuff
16 on my phone. But I don't recall saying that to him, but
17 I don't know. We had multiple conversations about
18 things."

19 Do you remember saying that under oath at
20 another hearing?

21 A Yes.

22 Q You literally admitted at that hearing there
23 is personal, private data on that phone. Hence, you got
24 rid of it, right?

25 A No.

1 Q You certainly wouldn't allow some kid at the
2 AT&T store to have your personal, private data. You're
3 a cop. You were a cop.

4 A No. I assume he doesn't have it.

5 Q Why would you assume that?

6 A Because he took the phone and has it.

7 Q And what do you think happens to the data on
8 the phone, sir? Let's just use common sense. What do
9 you honestly think happens to the data on the phone when
10 you turn it in and upgrade your phone?

11 A I'm sure the data's not there anymore.

12 Q It's destroyed, sir, correct?

13 A I don't know that for a fact. I know that
14 some things had transferred back to the new phone.

15 Q You just said you know the data's not there.

16 A Some, some data, I guess, isn't. Yes.

17 MR. JACKSON: Your Honor, that's all I have.

18 THE COURT: All right. Mr. Lally, any
19 questions?

20 MR. LALLY: No, Your Honor.

21 THE COURT: Okay. I am going to take a short
22 recess, and we will let this witness, if he
23 chooses, to have a few minutes.

24 THE WITNESS: Yes.

25 (Whereupon, a brief recess is taken.)

1 (Court resumes at 11:40 a.m.)

2 (Defendant present. Jury present.)

3 THE COURT: All right, Mr. Jackson. Go right
4 ahead.

5 MR. JACKSON: Thank you, Your Honor.

6 CONTINUED CROSS-EXAMINATION

7 BY MR. JACKSON:

8 Q Mr. Albert, you were notified by the
9 Commonwealth that on September 23rd, 2022, a judge
10 specifically ordered you to preserve that phone and all
11 its data, the phone ending in 0888; is that right?

12 A At what time are you asking me that I was
13 notified?

14 Q That day or the next.

15 A On the 23rd?

16 Q On the 23rd or the 24th of September?

17 A No.

18 Q Isn't it true that you were provided a letter
19 by the Commonwealth that stated the following.

20 MR. JACKSON: Your Honor, if I may read this?

21 MR. LALLY: No objection.

22 THE COURT: Yes. There is no objection.

23 MR. JACKSON: Thank you.

24 BY MR. JACKSON:

25 Q Quote (as read), "You are hereby notified

1 that the defense in the case of Commonwealth versus
2 Karen Read, Norfolk Superior Criminal Case -- sorry --
3 Norfolk Superior Court Criminal Case No. 22-117 has
4 filed a motion pursuant to Mass. R. Crim. P. 17 for the
5 production of any cell phones that you used between
6 January 28th, 2022 and February 28, 2022 and/or any data
7 associated with those cell phones.

8 "The hearing on Ms. Read's motion will be held
9 on October 3rd, 2022 at 2:00 p.m. in Courtroom 1 of the
10 Norfolk Superior Court. You may be heard on the motion
11 at that time. You are hereby placed on notice that
12 these cell phones are the subject of pending litigation
13 and you must not alter, delete, destroy or in any way
14 manipulate any of the electronic data associated with
15 the cell phone at issue," end quote.

16 You received that notice on either the 23rd or
17 the 24th; is that right?

18 A I did not.

19 MR. JACKSON: Your Honor, I would pose a
20 stipulation. I spoke with counsel off the record.
21 If I may?

22 THE COURT: You both have a stipulation that I
23 haven't seen?

24 MR. JACKSON: We just determined -- I'm happy
25 to approach.

1 THE COURT: Yes. Why don't we approach
2 quickly.

3 (Whereupon, there was a sidebar conference as
4 follows:)

5 THE COURT: What is the stipulation?

6 MR. JACKSON: Mr. Lally was kind enough to
7 confirm that he and his office did send this notice
8 either on the 23rd or the 24th of September.

9 THE COURT: Okay. So that it was sent but not
10 that it was received?

11 MR. JACKSON: Correct. I can't make him read
12 it. They don't have a copy of the letter that was
13 sent. I think a stipulation is cleaner. I simply
14 want to enter into the record that the Commonwealth
15 sent it. If he claims he never got it, so be it.

16 THE COURT: Okay. So what exactly was the
17 stipulation? What are you going to say?

18 MR. JACKSON: I would propose the following
19 stipulation, that the Commonwealth on either
20 September 23rd or September 24th, 2022 sent a
21 letter on Commonwealth letterhead stating exactly
22 what was just read into the record.

23 THE COURT: Okay. Don't read it again.

24 MR. JACKSON: I won't. No, no, no, no. That
25 what was just read into the record was sent to

1 Mr. Higgins -- I'm sorry -- to Mr. Albert on either
2 the 23rd or the 24th.

3 THE COURT: Okay. That's the stipulation?

4 MR. JACKSON: That's it.

5 MR. LALLY: That's fine. I don't have an
6 issue with that.

7 THE COURT: Okay.

8 MR. JACKSON: Thank you.

9 (Whereupon, the sidebar conference concluded.)

10 MR. JACKSON: May I, Your Honor?

11 THE COURT: Yes.

12 MR. JACKSON: I would offer the following
13 stipulation that on either September 23rd or
14 September 24th, the Commonwealth sent a letter on
15 Commonwealth letterhead to Mr. Albert's attention,
16 stating exactly what was just read into the record
17 pursuant to the court order dated September 23rd,
18 2022.

19 THE COURT: Okay. Next question.

20 MR. JACKSON: Thank you, Your Honor.

21 BY MR. JACKSON:

22 Q Isn't it true that you were, in fact, ordered
23 to preserve your cell phone by the Commonwealth?

24 A At some point, I was made aware of that, yes.

25 Q All right. Let's just get to the brass tacks.

1 Where is your phone?

2 A My phone was upgraded and traded in for a new
3 phone.

4 Q Your phone was upgraded and traded in for a
5 new phone?

6 A Yes.

7 Q Okay. Another way to say that is you traded
8 your phone in and got rid of it, correct?

9 A I traded my phone in and upgraded it, yes.

10 Q When did you get rid of your phone ending in
11 0888?

12 A I upgraded my phone in September, the third
13 week of September. Maybe around the 22nd.

14 Q The 22nd of September?

15 A I believe so. I can't be sure of the exact
16 date.

17 Q So according to you, you got rid of the phone
18 that was the subject of a court order preservation the
19 day before it was ordered preserved, right?

20 A What is the-- rephrase the question, please?

21 Q This order just stipulated -- this order is
22 dated September 23rd, 2022. It was just stipulated that
23 on the 23rd or 24th, you were then sent a notice to
24 preserve the phone. And your testimony is on the 22nd,
25 the day before this all happened, you upgraded your

1 phone and got rid of it in total, correct?

2 A I upgraded my phone on and around the 22nd,
3 yes.

4 Q And you knew that all of the data on that
5 phone would be factory reset and destroyed?

6 MR. LALLY: Objection.

7 THE COURT: Do you know that, sir?

8 THE WITNESS: I do not know that.

9 BY MR. JACKSON:

10 Q How many times have you upgraded your phone in
11 your life, an iPhone?

12 A I'm not sure. Four or five times, maybe.

13 Q You're aware that when you turn a phone in and
14 you upgrade it, the phone that you turn in, that data is
15 factory reset, meaning it's gone; it's destroyed off of
16 that device, correct?

17 A Well, I think some data transfers and some
18 doesn't.

19 Q I'm not talking about a backup. I'm talking
20 about the physical phone. That physical phone becomes a
21 brick when you turn it in, correct?

22 A Correct that it becomes a brick? I don't --

23 Q It becomes effectively a brick. There is no
24 data left on the phone? I'm not talking about back-up
25 data onto a cloud. I'm talking about that phone.

1 A So the old phone, yes.

2 Q Yes. Everything on it is destroyed, correct?

3 A Right, although some of the data transfers to
4 your new phone.

5 Q And you're aware that the very data that you
6 were ordered to preserve would have been destroyed,
7 according to you, the day before, correct?

8 A Rephrase your question or ask me a question.

9 Q If your -- are you claiming that you got rid
10 of your phone on the 22nd of --

11 A I upgraded my phone around that. I'm not sure
12 if that's the exact date, yes.

13 Q So it could have been after the 22nd?

14 A I don't think it was after the 22nd.

15 Q It could have been the 24th?

16 A No.

17 Q It could have been the 25th?

18 A No.

19 Q So you're absolutely sure that you could not
20 have upgraded your phone and gotten rid of it anytime
21 after the 23rd when this judge ordered that it be
22 preserved?

23 A No.

24 Q Because you know that if you got rid of that
25 phone after you had been notified that you were ordered

1 by a court to preserve it, you would be committing a
2 felony?

3 MR. LALLY: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. JACKSON:

6 Q So you now claim that you got rid of the phone
7 on September 22nd, 2022, hours before you were ordered
8 to preserve it? That's your testimony, correct?

9 A Yes.

10 Q Is that just a coincidence?

11 A September 4th was my birthday. The phone was
12 broken and failing. I had planned on getting a new
13 phone, and that just happens to be the day that I got
14 it.

15 Q Happy birthday. Was that a coincidence?

16 MR. LALLY: Objection.

17 THE COURT: Sustained.

18 BY MR. JACKSON:

19 Q You were asked at another hearing in June of
20 2023 that exact question, correct, whether it was a
21 coincidence. Do you remember that?

22 A I don't.

23 Q Do you recall being asked, quote (as read),
24 "So it's just a coincidence that within minutes, hours
25 or days" --

1 MR. LALLY: Objection, Your Honor.

2 THE COURT: Let's hear the question first.

3 BY MR. JACKSON:

4 Q -- "within minutes, hours or days of you
5 trading in your phone, that phone you had in January of
6 2022, that you were ordered to preserve it?

7 "Answer: Yes.

8 "Question: That's a coincidence?

9 "Answer: Yes."

10 MR. LALLY: Objection. Move to strike.

11 THE COURT: I'll let that stand.

12 BY MR. JACKSON:

13 Q That was your testimony, wasn't it?

14 A Yes.

15 Q And that's what you're saying today to these
16 jurors, it was just a coincidence?

17 A Yes.

18 Q Did you and Brian Higgins agree with each
19 other that you were both going to get rid of your
20 phones?

21 MR. LALLY: Objection.

22 THE COURT: I'll allow that.

23 THE WITNESS: No.

24 BY MR. JACKSON:

25 Q You told -- you testified at the other hearing

1 in June of 2022, quote (as read), "I don't recall saying
2 that I was going to get rid of my personal phone to
3 Brian Higgins. I may have said that. You know, there's
4 personal stuff on my personal phone, but I don't recall
5 saying that to him. But I don't know. We had multiple
6 conversations about things," end quote.

7 Do you remember testifying to that?

8 A Yes.

9 Q So you're not ruling out the fact that you may
10 have told Brian Higgins that you intended to get rid of
11 your phone, correct?

12 A No.

13 Q You're not ruling out the fact that Brian
14 Higgins may have told you that he intended to get rid of
15 his phone?

16 A No. I don't remember him saying that to me.

17 Q Your testimony was, quote (as read), "I know
18 there were conversations about the phones. I just can't
19 say if he was going to get rid of his phone or not," end
20 quote.

21 You testified to that, didn't you?

22 A Yeah. I had no idea of what he was going to
23 do.

24 Q I'm asking are those your words? Did you
25 testify to that under oath?

1 A Yes, although I don't know the context of the
2 time that they were asking that question.

3 Q June of 2023.

4 A No, not the day of the hearing but when they
5 were asking if and when that conversation took place.

6 Q Does it really matter when it took place?

7 A I think so, yes.

8 Q Well, you talked to Brian Higgins about
9 getting rid of your phones. When do you think you had
10 that conversation?

11 A I don't think I talked to Brian Higgins about
12 getting rid of my phones.

13 Q Well, you just said you can't rule out the
14 fact that you had conversations with Brian Higgins about
15 your phones and possibly getting rid of your phones,
16 right?

17 A No. I don't think that's what I said.

18 Q You two discussed the fact that you both
19 wanted to get rid of your phones?

20 A I don't remember having that conversation with
21 Brian Higgins at all.

22 Q Your testimony was, quote (as read), "I know
23 there were conversations about the phones, sir,"
24 correct?

25 A Correct, if that's what you're reading.

1 Q So if you're having conversations with
2 Brian Higgins about the phones, what the heck were you
3 talking about?

4 A I don't know the timing of when they asked
5 when those conversations were.

6 Q Mr. Albert, I'm leaving it open to you. I
7 don't care when it was. I'm asking you have you ever
8 had a conversation with Brian Higgins about your phones,
9 respectively?

10 A We may have. I just don't -- I can't remember
11 that conversation specifically.

12 Q Then why in June of 2023 did you testify (as
13 read), "I know there were conversations about the phones
14 with Brian Higgins," end quote?

15 A I'm not sure of the context of that.

16 Q So now you just can't remember?

17 A No. I don't think I could remember during
18 that testimony, either. If you read the whole thing, I
19 think I said I'm not sure, I don't remember.

20 Q Your quote was (as read), "I know there were
21 conversations about the phones. I just can't say if he
22 said he was going to get rid of his phone or not," end
23 quote.

24 A Right.

25 Q Does that help refresh your recollection?

1 A Yes.

2 Q So now as you sit here, can you answer my
3 question, did you and Brian Higgins have a conversation
4 about your phones?

5 A I don't remember having that conversation with
6 Brian Higgins.

7 Q All right. Let's shift gears. Before I shift
8 gears, you're aware that Brian Higgins has also gotten
9 rid of his phone, correct?

10 A I am not aware of that until after the time
11 you're talking about.

12 Q So without qualifying your answer, answer my
13 question. As you sit here, are you aware that
14 Brian Higgins has also gotten rid of his phone?

15 A I know at some point Brian Higgins --

16 Q It's yes or no, Mr. Albert.

17 A Did he --

18 MR. LALLY: Objection, Your Honor.

19 THE COURT: Can you answer that yes or no,
20 sir?

21 THE WITNESS: Yes.

22 BY MR. JACKSON:

23 Q Now I'd like to shift gears and talk a little
24 bit about Michael Proctor. Did Michael Proctor come
25 into your home at 34 Fairview on January 29th?

1 A Yes.

2 Q Michael Proctor? Let me rephrase the
3 question. I want to make sure -- I'm not talking about
4 Officer Lank or Officer Goode.

5 A Right.

6 Q Michael Proctor from the Massachusetts State
7 Police. Did he come into your home on January 29th?

8 A He conducted an interview with my wife. And I
9 don't remember if it was the 29th or the 30th.

10 Q Okay.

11 A If that's what you're asking.

12 Q Wasn't that interview on February 3rd?

13 A I feel like it was earlier than that, but it
14 could have been February 3rd.

15 Q Okay. Presume for purposes of my question
16 that it was February 3rd that Michael Proctor
17 interviewed your wife. Then he would not have come into
18 your home on the 29th, the 30th, the 31st, the 1st or
19 the 2nd?

20 A Right.

21 Q And you know from your training, obviously, as
22 a first responder, the first 48 hours of an
23 investigation are absolutely critical, correct?

24 MR. LALLY: Objection.

25 THE COURT: Do you know that, sir?

1 THE WITNESS: In that context, I don't.

2 THE COURT: Okay. Next question.

3 BY MR. JACKSON:

4 Q I mean, you're aware there's a T.V. show
5 called The First 48?

6 MR. LALLY: Objection, Your Honor.

7 THE COURT: Sustained.

8 BY MR. JACKSON:

9 Q Do you think the first 48 hours of a criminal
10 investigation are critical?

11 MR. LALLY: Objection.

12 THE COURT: Sustained.

13 BY MR. JACKSON:

14 Q You do know that the longer you wait to
15 properly investigate anything the better chance that
16 evidence can be manipulated or destroyed, right? You
17 would agree with that?

18 A Yes.

19 Q Did an investigator or any forensics team ever
20 come into your house ever to photograph your entire
21 home?

22 A No. I wish they had.

23 Q Did an investigator -- yeah. Me, too.

24 MR. LALLY: Objection, Your Honor.

25 THE COURT: Sustained.

1 BY MR. JACKSON:

2 Q Did an investigator or a forensics team ever
3 come into your house to search for physical evidence?

4 A No.

5 Q Did an investigator or a forensics team ever
6 come into your house to search for trace evidence?

7 A No.

8 Q Did an investigator or a forensics team ever
9 come into your house to take carpet samples, flooring
10 samples from the basement, for instance?

11 A No.

12 Q And to this day, you're aware that that's
13 never happened?

14 A Yes.

15 Q Sir, you were in the Marines before you were a
16 police officer, correct?

17 A Yes.

18 Q Are you a combat veteran?

19 A Yes.

20 Q How long were you in the Marine Corps?

21 A Four years.

22 Q During the course of your Marine and military
23 training, did you have any training in hand-to-hand
24 combat?

25 MR. LALLY: Objection.

1 THE COURT: I'll allow it.

2 THE WITNESS: Yes.

3 BY MR. JACKSON:

4 Q In addition to your Marine training on the
5 subject, did you also receive additional training from
6 the police department through the academy or otherwise
7 on basic hand-to-hand combat?

8 A No.

9 Q So that's not part of the academy?

10 A Not hand-to-hand combat, no.

11 Q Fighting technique, use of batons, things of
12 that nature?

13 A Defensive tactics.

14 Q Defensive tactics. Okay. That's fighting,
15 right?

16 A Well, it's not hand-to-hand combat, no.

17 Q Okay. Fair enough. I may be using the wrong
18 word. It's physical -- it's training on how to either
19 defend yourself or control another person physically?

20 A Yes.

21 Q I mean, they're not going to send you out
22 there on the streets completely ill-equipped. They need
23 to know that you know how to defend yourself and how to
24 put somebody in custody that doesn't want to be in
25 custody, correct?

1 A Yes.

2 Q And that might include fighting?

3 A It could, yes.

4 Q And, beyond your Marine training and your
5 police training, you're independently trained in
6 techniques of fighting? You're a boxer?

7 A Have I boxed before?

8 Q Yes.

9 A Yes.

10 Q Okay. And you've trained in boxing. It's not
11 like you just walked up and smack a heavy bag, right?

12 A You'd have to rephrase. What --

13 Q You've trained. You're a trained boxer?
14 You're a trained fighter?

15 A I've boxed in the past and I've trained to
16 box, yes.

17 Q Yes. I mean, I've hit a heavy bag.

18 A Right.

19 Q But I'm not a trained fighter. You're a
20 trained fighter.

21 MR. LALLY: Objection.

22 THE COURT: All right. So -- there's an
23 objection? You were standing, Mr. Lally.

24 MR. LALLY: Yes, Your Honor.

25 THE COURT: Jurors, disregard that.

1 Mr. Jackson, no comments. Just questions, please.

2 MR. JACKSON: Yes, Your Honor.

3 BY MR. JACKSON:

4 Q In fact, your boxing skills were featured in a
5 T.V. show that you were featured in, as well, correct?

6 MR. LALLY: Objection.

7 THE COURT: I'll allow that.

8 THE WITNESS: No.

9 BY MR. JACKSON:

10 Q You were, in fact -- no?

11 A That they were featured in a show? No.

12 Q You were never shown on T.V. in a ring,
13 sparring with somebody?

14 A I may have been shown training, but I don't
15 think I was having a boxing match. No.

16 Q Okay. I wasn't suggesting that you were
17 having like a Pay-Per-View. I was asking is there a
18 T.V. show that has showed you in a ring, boxing?

19 A Well, that's not what you asked me. But, if
20 you're asking me that now, yes.

21 Q I'm asking you that now. I apologize. My
22 questions are somewhat inartful.

23 A Yes.

24 Q And you understand the question now?

25 A Yes.

1 Q And you have been shown -- I used the word
2 "featured." You've been shown on television in a boxing
3 ring?

4 A Yes.

5 Q Sparring?

6 A I haven't seen the video in a while. I'm not
7 sure if I was sparring.

8 MR. JACKSON: If we can, Your Honor, with the
9 Court's permission, can we take a look at Exhibit
10 53?

11 THE COURT: Okay.

12 MR. JACKSON: There is a clip starting at --
13 it's time of day 11:47 and 15 seconds to 11:48 and
14 35 seconds. Maybe a minute and a half.

15 Can you enhance that?

16 (Whereupon, the video is played.)

17 MR. JACKSON: Pause.

18 (Whereupon the video is paused.)

19 BY MR. JACKSON:

20 Q Do you see the two men in the foreground?

21 A Yes.

22 Q Who are those two men?

23 A It looks like myself and Brian Higgins.

24 Q Does it look like yourself and Brian Higgins
25 or is that yourself and Brian Higgins?

1 A Yes, it is.

2 MR. JACKSON: Go ahead and play that.

3 (Whereupon, the video is played.)

4 MR. JACKSON: Okay.

5 (Whereupon, the video is paused.)

6 MR. JACKSON: One more clip to play, but I
7 have a couple of questions, Your Honor.

8 THE COURT: So let's take it down and you can
9 put the other one up after the questions.

10 MR. JACKSON: Thank you.

11 BY MR. JACKSON:

12 Q Did you see what was displayed on that video?

13 A Yes.

14 Q Had you seen that before?

15 A Part of it, yes.

16 Q Is that what you and Mr. Lally went over in
17 preparation for your testimony?

18 A I don't think that we went over it, but he
19 showed me a quick clip of it.

20 Q When you say he showed you "a quick look," did
21 he ask you questions about it?

22 A I don't think so, no.

23 Q Did you give him any answer about it?

24 A No.

25 Q Any explanations?

1 A No.

2 Q So he just showed you the clip and --

3 A I just said, yeah, it looks like we were
4 fooling around.

5 Q Okay. So you did make an explanation, gave
6 him an explanation for it?

7 A Right. I said, I think we were just fooling
8 around.

9 Q Okay. Well, it's the same thing you told us
10 this morning, right?

11 A Right.

12 Q Just fooling around.

13 A Yeah. Just having fun with my friends and
14 hanging out and fooling around.

15 Q Absolutely. Describe what you were doing.

16 A Having fun with my friends, hanging out, just
17 being silly.

18 Q Okay. Describe physically what you were doing
19 in the video.

20 A I was playing around, sort of getting in a
21 boxing stance.

22 Q Otherwise known as a fighting stance, correct?

23 A Yeah, for a second. Yes.

24 Q And what did Brian Higgins do when you got
25 into a fighting stance?

1 A It looked like he was kind of doing the same
2 thing.

3 Q Got into a fighting stance, as well, correct?

4 A Yeah.

5 Q What were you two talking about? You can tell
6 you were talking, right?

7 A Yeah. I don't know what we were talking
8 about. We were just being silly, fooling around, having
9 fun.

10 Q Were you giving him advice on the proper way
11 to get into a fighting stance or a boxing stance?

12 A No.

13 Q Were you giving him some advice or some
14 indicators about how to best position himself if someone
15 is taking an aggressive stance against him?

16 A No. No.

17 Q Is he telling you what he thought was a good
18 technique for fighting or boxing?

19 A I don't think it was that serious. We were
20 just playing, fooling around.

21 Q But both of you were in fighting stances,
22 facing off against each other, correct?

23 A Yeah, for a second or two.

24 Q And Mr. Higgins, you saw him bob his head and
25 started walking towards you like a boxer might, correct?

1 A Yeah. Yes.

2 Q And then you got down, pulled the pant legs
3 up. And you squatted down to indicate getting low,
4 having a low center of gravity, correct?

5 A No. That's indicating being silly.

6 Q Okay. And, at some point while you're being
7 silly, you then faked a right punch toward him, correct?

8 A I didn't notice that, but I'm not sure.

9 MR. JACKSON: Can we take a look at the next
10 part of this clip, which is at time of day 11:55
11 and 51 seconds -- I'm sorry, 11:54 and 52 seconds.
12 (Whereupon, the video is played.)

13 MR. JACKSON: Pause it and highlight it.

14 (Whereupon, the video is paused.)

15 Q Okay. There are several individuals crowding
16 around a table. Can you describe who, where you are and
17 where Mr. Higgins is?

18 A Brian Higgins is the guy on the right with the
19 hooded sweatshirt and the emblem on the back. I have a
20 pointer Do you want me to use it?

21 Q That would be great. That would be fine.

22 A So that's Brian Higgins and that's me.

23 MR. JACKSON: Go ahead and play this.

24 (Whereupon, the video is played.)

25 MR. JACKSON: Pause.

(Whereupon, the video is paused.)

Q Did you see what you just did?

A Yes.

Q What did you do when you slapped his right arm?

A What did I do?

Q What did you do? What are you doing?

A It looks like I'm just being silly, fooling around.

Q Okay I'm going to ask you for a little bit more physical description. What are you doing? Why are you grabbing him from behind?

A I don't really know.

Q Is that a wrestling hold?

A No.

Q Is that a control hold?

A No. I don't think so.

Q Is that some sort of a control hold that you've used in the past?

A Bear-hugging somebody? No. It's just a silly -- fooling around with my buddy.

MR. JACKSON: Let's go ahead and play this.

(Whereupon, the video is played.)

MR. JACKSON: Stop it.

(Whereupon, the video is paused.)

1 Q Do you see what Mr. Higgins just did?

2 A I did, yeah.

3 Q When you let him go, what did he do?

4 A I don't know. He did some kind of -- he
5 pretended to knee me or something.

6 Q Right. A knee to the abdomen?

7 A Yeah. I don't know if it made contact or not,
8 but --

9 Q Mr. Albert, I'm not suggesting by my questions
10 that you two are actually in a fight.

11 A Right.

12 Q I'm asking what he's doing, does it seem to --
13 does it appear to you --

14 A Yeah. I don't --

15 Q -- that he's playing like or practicing like
16 techniques in fighting?

17 A I don't know what his intent is. It looks
18 like he's just fooling around, just like I was.

19 Q But, if a grown man walks up to you, grabs you
20 from behind and puts a knee up to your solar plexis,
21 that's probably not the same as a high five, right?

22 A What is your question?

23 Q In other words, it looks like he's practicing
24 some sort of fighting technique?

25 A Practicing? That's not how I see that.

1 Q How would you describe it?

2 A I would just describe it as him fooling
3 around. We are in the bar together. We're good
4 friends. We're just being silly and fooling. That's
5 all.

6 Q There's a number of people in that bar. You'd
7 agree with that?

8 A Yes.

9 Q Do you see anybody else in that video at any
10 time getting physical with one another?

11 MR. LALLY: Objection.

12 THE COURT: Sustained.

13 BY MR. JACKSON:

14 Q How much of this video have you actually
15 watched?

16 A Not much.

17 Q Okay. Then let me ask you a different
18 question.

19 From your memory of that night, who were the
20 only two people in the bar who seemed to be getting
21 physical with one another?

22 MR. LALLY: Objection.

23 THE COURT: Can you answer that?

24 THE WITNESS: Sure. The only person I
25 remember being physical with was fooling around

1 with Brian.

2 MR. JACKSON: Okay. Play it just a little bit
3 longer. We're almost finished.

4 (Whereupon, the video is played.)

5 MR. JACKSON: Okay.

6 (Whereupon, the video is paused.)

7 Q Did you see the rest of that video?

8 A Yes.

9 Q There's no question that you two are being
10 friendly with one another, correct?

11 A Yes.

12 Q You would agree with that?

13 A Yes.

14 Q But there is also no question that of all the
15 people in that bar, the only two people that appeared to
16 be imitating fighting are you and Mr. Higgins, correct?

17 A In that video, yes.

18 Q Is there another video?

19 A Well, no. I just don't know what everybody
20 else was doing in the bar.

21 Q Do you remember anybody else, you know,
22 Julie Albert or Nicole, getting --

23 A I don't remember.

24 Q -- into a scrap with someone?

25 A No.

1 Q Just you two, correct?

2 A Yes.

3 Q Mr. Albert, this is minutes before everybody
4 headed to your house at 34 Fairview, correct?

5 A Yes.

6 Q Including John O'Keefe?

7 A Yes.

8 Q Going back to the morning of January 29th,
9 everyone had left your location. This is after you'd
10 already arrived, had a couple of beers and people
11 started leaving. Everybody was gone from your location
12 about 1:45 a.m., maybe a little thereafter?

13 A That seems right.

14 Q Caitlin being the last person to leave?

15 A I believe so, yes.

16 Q What did you do to get ready for bed, to
17 settle in?

18 A I went upstairs and just laid in bed. The
19 T.V. was on. I was just kind of watching T.V.

20 Q Do you have a night stand?

21 A I do.

22 Q Is it on your side of the bed or Nicole's or
23 do you have one on each?

24 A We may have had one on each in that house.

25 Q Did you put your phone on your night stand?

1 A No.

2 Q Where did you put your phone?

3 A The phone was in bed with me.

4 Q So your testimony is that you get in bed after
5 being on a road trip all day long, then at restaurants
6 and at bars, then at a get-together at your house. And,
7 when you go to bed, you don't charge your phone?

8 A No. I had the phone in the bed with me.

9 Q Why would you have a phone in bed with you?

10 A We have five kids and, you know, if somebody
11 was trying to call or if I needed to reach them, it's
12 just kind of a habit I do. I put my reading glasses and
13 my phone in bed with me.

14 Q And you don't charge it?

15 A Sometimes I charge it but not as a routine,
16 no.

17 Q So you're worried about having your kids out
18 and they might need to get a hold of dad. So you make
19 sure that your phone is nice and close but it can just
20 run out of batteries?

21 A Well, if it's dying, then I'll put it in the
22 charger. But, if not, I just leave it on the bed.

23 Q Well, what about that night?

24 A That night, the phone was on the bed.

25 Q How do you know?

1 A I remember the phone being on the bed.

2 Q You have a specific recollection from two and
3 a half years ago about the state of the battery charge
4 on your phone such that you know that it was in your bed
5 that night?

6 A No. I just know as a routine I keep my phone
7 in the bed with me.

8 Q That's not what you just said. You just said
9 it depends on whether or not the battery needs to be
10 charged as to whether or not you charge it.

11 A My answer is that sometimes I, of course,
12 charge my battery.

13 Q Of course you have to.

14 A But I sleep with the phone in my bed.

15 Q Every single night?

16 A Yes. Mostly every night.

17 Q Okay. I thought you just said four questions
18 ago, it depends on whether or not the phone needs to be
19 charged. Sometimes you keep it in the bed. Sometimes
20 you put it on the charger?

21 A If the phone needs to be charged, I charge it.
22 But I sleep in bed with my phone.

23 Q Mr. Albert, did your phone need to be charged
24 that night?

25 A I don't remember if it did, but I slept in bed

1 with the phone.

2 Q You had been on a road trip most of the day,
3 correct?

4 A Yes.

5 Q You'd been out to bars that night, correct?

6 A Uh-huh.

7 Q Is that a yes?

8 A Yes.

9 Q You weren't charging your phone. We just saw
10 the video. You weren't charging your phone at the bar.

11 A Right.

12 Q So when you got home, you clearly put your
13 phone on a charger, didn't you?

14 A I did not.

15 Q So if your kids needed to get a hold of you,
16 why would the phone being in your bed be of any
17 assistance to you instead of just on the charger on the
18 night stand?

19 A That's just what I've always done. I just
20 keep it in my bed. My wife does the same thing.

21 Q Okay. So now you've got two phones in the
22 bed?

23 A Yes.

24 Q And your glasses?

25 A Yes.

1 Q Right between the two of you?

2 A Yes.

3 Q Got it. Does your phone have a ringer on it?

4 A It does.

5 Q Ever thought about maybe turning the ringer on
6 just in case the kids need to get a hold of you?

7 A Sometimes it's on vibrate. Sometimes it's on
8 ring. It depends.

9 Q Yeah. It depends on you. You can just put it
10 on ringer. Wouldn't that make more sense to go to bed
11 and put it on ringer?

12 MR. LALLY: Objection.

13 THE COURT: Can you answer that?

14 THE WITNESS: All I can answer is that I sleep
15 with my phone in my bed. That's just what I do.

16 BY MR. JACKSON:

17 Q And you know what I'm about to ask you, which
18 is why you say you sleep with the phone in the bed,
19 correct?

20 MR. LALLY: Objection, Your Honor.

21 THE COURT: So that's sustained. That's
22 stricken. Move on, Mr. Jackson.

23 BY MR. JACKSON:

24 Q All right. What else is in the bed with you?
25 Your keys, your wallet? Any other pocket items?

1 A No.

2 Q Just the phone and your glasses?

3 A Yes.

4 Q And Nicole's phone?

5 A Yes.

6 Q Right between the two of you?

7 A Usually, yes.

8 Q What about that night?

9 A Yes.

10 Q Sir, did you make any phone calls after you
11 went to bed between the hours of 1:45 a.m. and 6:30
12 a.m.?

13 A Yes.

14 Q Who did you call?

15 A I inadvertently called Brian Higgins.

16 Q What time?

17 A I don't recall the exact time. After two.

18 Q 2:22 and 35 seconds. Does that sound
19 familiar?

20 A Yes.

21 Q Did you speak to Brian Higgins at any point
22 between 1:45 a.m. and 6:30 a.m. that night?

23 A No.

24 Q You say you inadvertently called him at 2:22
25 in the morning.

1 A Yes.

2 Q How did you inadvertently call him?

3 A Well, I don't know because it was inadvertent.

4 Q You have to explain that.

5 A Well, it's kind of like a butt-dial.

6 Q Kind of like a butt-dial. All right. How
7 long have you used an iPhone?

8 A It's been a long time.

9 Q As a matter of fact, you've been asked this
10 question before, haven't you?

11 A Yes.

12 Q Hence my question: You knew what I was going
13 to ask you?

14 MR. LALLY: Objection, Your Honor.

15 THE COURT: Sustained.

16 MR. JACKSON: I'll withdraw it.

17 BY MR. JACKSON:

18 Q You indicated previously at a different
19 hearing in June of 2023 that you were, quote, "hanging
20 out with your wife and you must have butt-dialed
21 Mr. Higgins," correct?

22 A Yes.

23 Q At 2:22 and 35 seconds on January 29th, 2022,
24 correct?

25 A Yes.

1 Q You were asked how that could have happened,
2 much like I just asked how that could have happened,
3 right?

4 A Yes.

5 Q And, in that hearing, you said, quote (as
6 read), "I'm not totally sure," similar to what you just
7 said here?

8 A Yes.

9 Q And here, you added that it could have been a
10 butt-dial?

11 A Yes.

12 Q You were then called back to that same hearing
13 but at a different date, an ongoing hearing, right?

14 A Yes.

15 Q That was in July of 2023, correct?

16 A Yes.

17 Q You then changed your testimony and said, and
18 I don't mean to be indelicate, but your testimony was
19 then that you were having -- you were in an intimate
20 situation, put it that way, with Nicole at the time and
21 that's how you butt-dialed Brian Higgins, correct?

22 A I don't believe I said that's how I butt-
23 dialed Brian Higgins.

24 Q That's the time --

25 A I think I said there was a time frame that

1 that was close.

2 Q Okay.

3 A So I didn't say that, no.

4 Q All right. What you said was you were in an
5 intimate situation with Nicole at the time that the
6 butt-dial occurred, correct?

7 A I'm not sure. If you have something that you
8 can read me or show me?

9 Q Is it your testimony -- let me just ask.

10 A Sure.

11 Q Is it your testimony that you and your wife
12 were in the middle of some sort of sexual or intimate
13 situation and that's what caused you to butt-dial the
14 phone at that time at 2:22 a.m.?

15 MR. LALLY: Objection.

16 THE COURT: Sustained.

17 BY MR. JACKSON:

18 Q I'd like to show you an exhibit briefly.

19 MR. JACKSON: May I have just a moment, Your
20 Honor?

21 THE COURT: Yes.

22 MR. JACKSON: May I approach briefly?

23 THE COURT: Yes.

24 BY MR. JACKSON:

25 Q Mr. Albert, I just want to find out if this

1 refreshes your recollection. Look at Lines 11 through
2 13 and then let me know when you're prepared.

3 A Yes.

4 MR. JACKSON: May I approach?

5 THE COURT: Yes.

6 MR. JACKSON: Thank you.

7 BY MR. JACKSON:

8 Q Does that refresh your recollection that you
9 indicated at the other hearing that --

10 THE COURT: Just the first part of that first.

11 Does that refresh your recollection?

12 THE WITNESS: It does.

13 THE COURT: Okay. Now you can ask.

14 MR. JACKSON: Thank you, Your Honor.

15 BY MR. JACKSON:

16 Q Isn't it true that at the other hearing, you
17 indicated that at or around the 2:22 time frame, you and
18 your wife were in bed together in an intimate situation?

19 A Yes. "Around that time" I think it reads.

20 MR. JACKSON: May I approach, please, Your
21 Honor?

22 THE COURT: Yes.

23 MR. JACKSON: Well, with the Court's
24 permission, let me ask a couple of questions.

25 BY MR. JACKSON:

1 Q Do you recall every call that you made
2 between, say, 1:45 a.m. and the next couple of days? Do
3 you remember every single one of those calls?

4 A No.

5 Q Do you think it would refresh your
6 recollection to look at a log of those calls during that
7 time frame if we are going to discuss those?

8 A Yes.

9 MR. JACKSON: May I approach, Your Honor?

10 THE COURT: Yes.

11 MR. JACKSON: May I, Your Honor?

12 THE COURT: Yes.

13 BY MR. JACKSON:

14 Q That's two pages worth of documents. If it
15 refreshes your recollection as we walk through this,
16 with the Court's permission, let me know if you need to
17 refer to that.

18 A I'm not going to be able to read it right now
19 but do it as you ask?

20 Q Correct. Correct. Yes. No. You don't need
21 to read it right now. I just wanted to have it in front
22 of you.

23 By the way, you've seen these records before,
24 correct, at the other hearing/proceeding?

25 A I've seen some records before, yes. I don't

1 know if these exact records or not.

2 Q And you've acknowledged that at least the
3 first page -- these are your phone records for the
4 number ending 0888, correct?

5 A Yes.

6 Q Okay. And these are call records from January
7 29th?

8 A Yes.

9 Q At 2:22 and 35 seconds in the morning,
10 correct?

11 A Yes.

12 Q Whose number ends in 5421?

13 A According to this, it's Brian Higgins.

14 Q The call at 2:22 and 35 seconds appears to be
15 one second in length. And that's from you to him,
16 correct?

17 A It says one second.

18 Q That would be the call, the initial call from
19 you to him, the one that you claim is a butt-dial; is
20 that right?

21 A Yes.

22 Q Did that call roll to voicemail and then you
23 immediately hung up?

24 A No. I don't recall if it -- I don't recall,
25 no.

1 Q So according to you, it was a butt-dial that
2 went to his phone that somehow lasted one second?

3 A Right.

4 Q Okay. Then there is a second call. If you
5 look at the second line down, there is a second call at
6 2:22 and 52 seconds, 17 seconds later, correct?

7 A Yes.

8 Q That call is actually from Brian Higgins to
9 you, isn't it?

10 A Yes.

11 Q And that call doesn't last one second. That
12 call lasts 22 seconds, correct?

13 A Yes.

14 Q Obviously, you know how long 22 seconds is.

15 A What's that?

16 Q You know how long 22 seconds lasts?

17 A Yes.

18 Q So according to your phone records, you placed
19 a call to him and then 17 seconds later, he returned a
20 call to you that lasted 22 seconds, correct?

21 A That's what the records reflect. Yes.

22 Q When you woke up in the morning, you obviously
23 checked your phone, did you not?

24 A I don't know if I did.

25 Q Are you telling this jury that the call that

1 came into your phone was a missed call, or did you
2 answer it?

3 A I did not answer it.

4 Q So it would have been a missed call?

5 A I just know I didn't answer the call.

6 Q So it would have been a missed call by
7 definition?

8 A I don't know. I don't know that to be a fact.
9 I just know that I didn't answer the phone. I missed
10 the call, yes.

11 Q That's what I mean. You missed the call.

12 A Right. Right.

13 Q You did something on your phone and you just
14 didn't answer it, according to you?

15 A Right.

16 Q And, again, you were using an iPhone?

17 A Yes.

18 Q If you butt-dialed Brian Higgins and he called
19 you back and you didn't answer, you would have a very
20 bright red "missed call" in your call log, correct?

21 MR. LALLY: Objection.

22 THE COURT: Do you know that?

23 THE WITNESS: I don't know that.

24 BY MR. JACKSON:

25 Q Have you ever missed a call on your iPhone

1 before?

2 A Yes.

3 Q And, when you go to your call logs, it says
4 "missed call" in red, correct, if your wife calls you
5 and your kids call you?

6 A I don't think I've ever noticed that it's in
7 red. So no. I don't know that to be true.

8 Q You're certainly alerted to the fact that it's
9 a missed call, that you missed a call, correct?

10 A If I were to go back and look at my incoming
11 calls, it would probably say "missed call," yes.

12 Q And, of course, if we asked you to show us
13 your phone and show that that was a missed call, you
14 couldn't do that because you've gotten rid of that
15 phone, correct?

16 MR. LALLY: Objection.

17 THE COURT: Sustained.

18 BY MR. JACKSON:

19 Q Did you tell anyone in law enforcement that
20 next day that oddly Brian Higgins was calling you at
21 2:22 a.m. and you missed a call?

22 A No. I wasn't aware of that call.

23 Q If a call went to voicemail on your phone, you
24 would get that voicemail, correct? You would get notice
25 of it?

1 A If I checked my voicemails and there was a
2 voicemail, I would get it. Yes.

3 Q That's my question. Did you get a voicemail
4 from Brian Higgins?

5 A No.

6 Q Which means he didn't leave a voicemail,
7 correct?

8 A Right.

9 Q Which would suggest that you answered the
10 call, correct?

11 MR. LALLY: Objection.

12 THE COURT: Sustained.

13 BY MR. JACKSON:

14 Q Let's talk for a second about this butt-dial.
15 You went to bed and you closed and locked your phone,
16 correct?

17 A Yes.

18 Q I don't want you to tell me what the passcode
19 is, Mr. Albert. That's important. I want to make sure
20 you understand. I'm not asking you to tell me what the
21 passcode is. But, at the time, was your passcode a
22 four-digit or six-digit passcode?

23 A Four, I believe.

24 Q And that locks the phone when it's not in use,
25 correct?

1 A The phone will lock after it's not used for a
2 while. I don't know the exact timing of it.

3 Q You're exactly right, Mr. Albert. I said it
4 backward. The phone automatically locks and you have to
5 use the four-digit passcode to unlock it, correct?

6 A Well, no. I also have voice -- I mean, face
7 recognition too. So it can open that way without any
8 passcode.

9 Q We'll get to that in a second.

10 The phone locks when it's not in use, correct?

11 A Yes.

12 Q And then to make a call once you open the
13 phone either through facial recognition or through the
14 passcode, then you have to tap on the phone app in order
15 to open up the phone app, correct?

16 A Yes. I believe so.

17 Q Once you open up that phone app, there are
18 only three ways that you can initiate a phone call:
19 Favorites, recents and contacts, correct?

20 A I don't know that.

21 Q If you tap on a contact, that opens up the
22 contact page or the contact app, right? You know that?

23 A Yes.

24 Q That's where your contacts are?

25 A Yes.

1 Q They are alphabetized?

2 A Yes.

3 Q You have to either scroll through or do a
4 search and type in the name of the person you're looking
5 for?

6 A Right.

7 Q You didn't do that, did you?

8 A No.

9 Q If you tap "favorites," if you have favorites
10 listed, there is a list of favorites. You have to
11 scroll through and tap the one that you want to call,
12 correct?

13 A I think so, yes. I'm not totally aware of
14 that.

15 Q And, if you tap on "recent," those are the
16 recent calls that you've have, you've ever received or
17 made. And, of course, you have to tap on the contact in
18 the recents list that you want to call, right?

19 A Yes.

20 Q And then, of course, you would have to tap
21 again to end whatever call you initiated, right?

22 A Yes.

23 Q I mean, you don't just say "goodbye." You've
24 got to say "goodbye" and hang up. You've got to tap it
25 to hang it up?

1 A Right.

2 Q So would you agree from a closed and locked
3 phone there is no physical mechanism by which a person
4 can hit one button and make a phone call?

5 MR. LALLY: Objection.

6 THE COURT: Sustained. You can ask it
7 differently.

8 BY MR. JACKSON:

9 Q Are you saying that from your closed and
10 locked phone you inadvertently tapped your phone one
11 time and that initiated a butt-dial to Brian Higgins?

12 MR. LALLY: Objection.

13 THE COURT: Is that what you're saying?

14 THE WITNESS: No, it's not what I'm saying.

15 BY MR. JACKSON:

16 Q Tell me what you're saying. How did you
17 butt-dial Brian Higgins at 2:22 in the morning?

18 A I don't know that the phone was locked. I
19 could have been looking through my phone. I butt-dial
20 people often and make inadvertent calls. I could have
21 hit a last call from him by accident, thus calling his
22 phone.

23 Q So you were actually awake and on your phone
24 at the time?

25 A I was awake and I could have been looking at

1 my phone.

2 Q So, Mr. Albert, how did you miss the call 17
3 seconds later?

4 A My wife is in the room with me and we were
5 hanging out. And I never got the second call from him.
6 So I'm not sure what time he called. I'm not sure what
7 I was doing at that second, but I don't know.

8 Q But it didn't go to voicemail?

9 A Well, I didn't get a voicemail from him, no.

10 Q So it didn't go to voicemail because you
11 didn't --

12 A Well, I don't know that it didn't go to
13 voicemail. I just know that I didn't receive a
14 voicemail from him.

15 Q So if you -- okay. You're saying --

16 A I mean, we are guessing here. But I mean, he
17 could have called voicemail --

18 Q No. Actually, we are not all guessing here.

19 A Well, you are because you don't know if he
20 left a voicemail or didn't or at least got voicemail and
21 then hung up the phone.

22 Q I think one of us is trying to guess.

23 MR. LALLY: Objection, Your Honor.

24 THE COURT: Sustained. You know what? I want
25 to see counsel at sidebar for just a second,

1 please.

2 (Whereupon, there was a sidebar conference as
3 follows:)

4 THE COURT: I'm giving you a lot of leeway
5 with your questions. Please calm down.

6 MR. JACKSON: Yes, ma'am.

7 (Whereupon, the sidebar conference concluded.)

8 BY MR. JACKSON:

9 Q Are you now saying that your phone was open
10 and unlocked at 2:22 a.m.?

11 A I'm saying it could have been.

12 Q Are you saying that it was?

13 A I don't know.

14 Q Mr. Albert, you were the only person that was
15 there with your phone. Was the phone unlocked and did
16 you make a call?

17 MR. LALLY: Objection.

18 THE COURT: Can you answer that?

19 THE WITNESS: Sure. I don't know.

20 BY MR. JACKSON:

21 Q And 17 seconds later, again, presuming you're
22 the only person there with the phone, did you answer
23 that call?

24 A I did not.

25 Q You would agree that in order to answer a

1 call, you can't just look at your phone to answer it.

2 It has to be swiped physically, correct?

3 A I think you can hit -- I think it comes up
4 green or red for the phone call whether it's locked or
5 not. You can hit green.

6 Q Right. But you have to hit a button?

7 A Yes.

8 Q Did you hit a button to answer a call from
9 Brian Higgins --

10 A I don't --

11 Q I don't mean to talk over you. Please let me
12 finish my question.

13 Did you hit a button to answer a phone call
14 from Brian Higgins at 2:22 and 52 seconds in the
15 morning?

16 A Not that I know of.

17 Q You do know that that phone will not answer on
18 its own, correct?

19 A Yes.

20 Q And simply touching your butt will not answer
21 that phone? It has to be swiped?

22 A No. I don't think it has to be swiped.

23 Q You would agree that a 22-second call from
24 Brian Higgins had to have been answered by you; isn't
25 that right?

1 MR. LALLY: Objection.

2 THE COURT: Do you agree with that?

3 THE WITNESS: No.

4 BY MR. JACKSON:

5 Q Who else was in the room?

6 A Just myself and my wife.

7 Q And Chloe?

8 A Yes. But Chloe's not a human. So it was
9 myself and my wife.

10 Q By process of elimination, Nicole didn't
11 answer that call, did she?

12 A No.

13 Q Chloe, the nonhuman, didn't answer that call,
14 did she?

15 A No.

16 Q So who had to have answered the call, sir?

17 MR. LALLY: Objection.

18 THE COURT: Can you answer that?

19 THE WITNESS: I don't remember answering that
20 call. I could have hit the phone by accident,
21 causing it to answer.

22 THE COURT: Move on, please, Mr. Jackson.

23 MR. JACKSON: Your Honor, if I could have one
24 or two more questions?

25 THE COURT: One more question.

1 BY MR. JACKSON:

2 Q Now your testimony is you could have answered
3 the call, correct?

4 A No. My testimony is that I don't know.
5 You're asking how it could have answered, and I'm trying
6 to answer your question.

7 Q At a prior hearing in June of 2022, you were
8 asked this exact question and you answered quote (as
9 read), "Yeah. It's only possible that it's me," end
10 quote, correct?

11 A I don't recall answering that way, but -- I'm
12 not sure.

13 Q And you were also asked, after being
14 confronted with these records, quote --

15 MR. LALLY: Objection.

16 MR. JACKSON: -- (as read), "I guess I could
17 have talked to him," meaning Mr. Higgins, correct?

18 THE COURT: I'll allow this answer.

19 THE WITNESS: I don't recall saying that, no.

20 THE COURT: Let's move on.

21 BY MR. JACKSON:

22 Q Did you have any conversation with Brian
23 Higgins about a 2:22 a.m. phone call?

24 A That next morning while everything was going
25 on, I mentioned to Brian that I may have butt-dialed you

1 last night. Sorry about that.

2 Q Did the two of you agree that you were going
3 to both say those calls were butt-dials in order to
4 cover up those calls?

5 MR. LALLY: Objection.

6 THE COURT: You can answer that.

7 THE WITNESS: We did not say that.

8 BY MR. JACKSON:

9 Q But let's be clear. Since then and now,
10 you've gotten rid of your phone, correct?

11 A I upgraded my phone, yes.

12 Q And, since then and now, Brian Higgins has
13 gotten rid of his phone. And you're aware of that, as
14 well?

15 A Yes.

16 Q By the way, you indicated that you were
17 awakened in the morning by Jen McCabe about 6:30,
18 correct?

19 A Yes.

20 Q And, when you woke up, you said you grabbed
21 your phone to make a call; is that right?

22 A No.

23 Q Isn't it true that you grabbed your phone and
24 made a call at 7:20 in the morning?

25 A Yes. But that's not when I was awoken by my

1 sister-in-law.

2 Q I'm sorry. That wasn't my question.

3 After you're awake and you're up, you started
4 making calls?

5 A Right.

6 Q My question is, what was the first call you
7 made at 7:20?

8 A Can I look at this?

9 Q If that refreshes your recollection.

10 MR. JACKSON: With the Court's permission?

11 THE COURT: Yes.

12 THE WITNESS: At 7:20, I called Brian Higgins.

13 BY MR. JACKSON:

14 Q Mr. Albert, you have six siblings and five
15 kids, right?

16 A Yes.

17 Q You have in-laws, cousins, huge family,
18 correct?

19 A Yes.

20 Q But on the morning you find out that
21 John O'Keefe is laying dead or dying on your lawn, the
22 first call you made at 7:20 was to Brian Higgins; is
23 that right?

24 A Yes.

25 Q The same person you had a call with or at

1 least the logs indicate you had a call with at 2:22 in
2 the morning, correct?

3 A Yes.

4 Q During that 7:20 a.m. call, did you two
5 discuss the 2:22 a.m. calls?

6 A No.

7 Q I thought you just said that you told him, oh,
8 I think I may have butt-dialed you?

9 A Yeah. That was later in the morning when he
10 came to the house.

11 Q Not on that 7:20 a.m. call?

12 A No.

13 Q What did you talk about on that 7:20 a.m.
14 call?

15 A I informed him of what was going on at my
16 house. We were out the night before, and I thought it
17 was important for him to know what had happened.

18 Q Mr. Albert, I have a couple more questions of
19 the phones or the phone usage that morning and
20 throughout the day.

21 You called Brian Higgins at 7:20 a.m. for one
22 minute and 56 seconds, correct?

23 A Yes.

24 Q Brian Higgins called you at 7:30 for five
25 minutes and 47 seconds?

1 A Yes.

2 Q You called Brian Higgins at 7:57 a.m. and
3 spoke for 12 minutes and 33 seconds?

4 A Yes.

5 Q You then called your brother, Kevin Albert, at
6 9:40 a.m and spoke for one minute and five seconds?

7 A Yes.

8 Q Chief Berkowitz called you at 9:50 a.m. and
9 left a voicemail; is that right?

10 A He didn't leave me a voicemail, but I think he
11 called me.

12 Q You called Chief Berkowitz back at 9:54, four
13 minutes later, and spoke for four minutes and 40
14 seconds, right?

15 A Yes.

16 Q You called Jen McCabe at 11:30 a.m.; is that
17 right?

18 A Yes.

19 Q And Jen McCabe called you back at 12:20 p.m.,
20 and you spoke for seven minutes and 52 seconds?

21 A Yes.

22 Q You called Kevin Albert again at 2:01 in the
23 afternoon and spoke for eight minutes?

24 A Yes.

25 Q You called Kevin Albert at 6:45 -- I'm sorry.

1 You called Brian Higgins at 3:24 p.m. and spoke for six
2 minutes and five seconds; is that right? And, if it
3 refreshes your recollection, there is a second page, a
4 second log. If you'll turn your attention to the 3:24
5 p.m. time frame.

6 A I'm trying to find it.

7 Q Take your time.

8 A What time are you referring to?

9 Q 3:24 p.m.

10 A I see it. Yes.

11 Q And there is a second call. You call
12 Brian Higgins at 6:12 p.m. and speak for a minute and
13 seven seconds, right?

14 A Yes.

15 Q And then the third one on that page, you
16 called Brian Higgins at 6:35 p.m. and spoke for 10
17 minutes and 12 seconds, correct?

18 A Yes.

19 Q Turning back to your call logs, you called
20 Kevin Albert at 6:45 on that same day and spoke for
21 about 16 minutes?

22 A Yes.

23 Q Then on the next day, January 30th, you called
24 Chief Berkowitz and spoke for a minute and six seconds?

25 A Yes.

1 Q And the following day you spoke with
2 Jen McCabe, who called you at 8:04 p.m., correct?

3 A Yes.

4 Q And then, finally, Chief Berkowitz called you
5 at 1:48 p.m. on February 1st, right?

6 A Yes.

7 Q Three days later, you spoke again to
8 Brian Higgins at 8:48 a.m.; is that right?

9 A Yes.

10 Q The subject of these calls, Mr. Albert, were
11 all about the fact that John O'Keefe was found dying on
12 your yard, on your lawn, on January 29th, 2022; isn't
13 that right?

14 A I don't know the subject of all these calls.
15 No.

16 Q You had to have been talking about that event?

17 A Of course. It was a horrible situation that
18 was going on. Everybody was distraught and there were a
19 lot of phone calls. This call log doesn't encompass all
20 the phone calls.

21 Q No, it doesn't.

22 A There were a lot of phone calls being made to
23 a lot of people because of this horrible situation.

24 Q And the point is, Mr. Albert, those many calls
25 that you've just described, especially as they pertain

1 to Brian Higgins, Jen McCabe; Kenny Berkowitz; your
2 brother, Kevin Albert, were those many calls an effort
3 to get stories straight at the time?

4 A No. Absolutely not.

5 Q Were those many calls --

6 THE COURT: So I'm going to interrupt. We are
7 going to send the jury out. Jurors, actually, why
8 don't we take the luncheon recess. I'll see
9 counsel at sidebar.

10 (Whereupon, the jury is escorted from the courtroom
11 for the luncheon recess and there was a sidebar
12 conference as follows:)

13 THE CLERK: Folks, sidebar.

14 **Court Order: Jurors or Juror Issues**
15

16 MR. JACKSON: I wish I had told you. I have
17 two questions left. It's okay. It happens. thank
18 you. I appreciate it.

19 THE COURT: And they come over to sidebar as
20 quickly as they can.

21 MR. JACKSON: I get it. I've got two more
22 questions and I'm done.

23 THE COURT: Great.

24 MR. JACKSON: Thank you, Your Honor.

25 THE COURT: We will take our luncheon break.

(Whereupon, the sidebar conference concluded and
the luncheon recess was taken.)

A F T E R N O O N S E S S I O N

(Court resumes.)

(Defendant present. Jury present.)

THE COURT: Mr. Jackson, if I had realized that you only had a couple of questions, we would not have taken the break when we did.

MR. JACKSON: Quite all right, Your Honor.
May I resume?

THE COURT: Please.

MR. JACKSON: Thank you.

BY MR. JACKSON:

Q Mr. Albert, I want to address a couple of quick things that we talked about a little bit earlier.

The September 22nd, 2022 date. Do you recall that date?

A Yes.

Q That's the date that you indicate that you believe you got rid of your phone or turned your phone in for an upgrade?

A Yes.

Q Did you watch the proceedings on this case, the Commonwealth versus Karen Read, on September 22nd, 2022?

A No.

Q You were not aware that that was the first

1 date that I appeared on this case and it was nationally
2 televised?

3 MR. LALLY: Objection.

4 THE COURT: Sustained.

5 BY MR. JACKSON:

6 Q Were you aware that that hearing date of
7 September 22nd, 2022 was a televised hearing?

8 MR. LALLY: Objection.

9 THE COURT: Sustained.

10 BY MR. JACKSON:

11 Q What did you know about the hearing date of
12 September 22nd, 2022?

13 A I didn't know anything about it.

14 Q You knew nothing about it?

15 A No.

16 Q Okay. Let me ask you a different question,
17 and this is going to dovetail into an earlier
18 conversation you and I had concerning the statement that
19 you gave in June of 2023 in the other hearing. Do you
20 understand what I'm saying?

21 A Yes.

22 Q I'm fumbling the language a little bit, but
23 you understand the hearing that I'm talking about?

24 A Yes.

25 Q You had indicated a little bit earlier in my

1 questioning that you did not recall saying something to
2 the effect of, yeah, it's only possible that it was me
3 who answered the phone. Do you remember saying that,
4 that you didn't recall that?

5 A Yes.

6 MR. JACKSON: May I approach, Your Honor?

7 THE COURT: Yes.

8 MR. JACKSON: Thank you.

9 BY MR. JACKSON:

10 Q Mr. Albert, there is a highlighted portion of
11 that transcript. If you would just take a look at that
12 and when you're finished reviewing it, just look up at
13 me and let me know.

14 A Yes.

15 MR. JACKSON: May I approach, Your Honor?

16 THE COURT: Yes.

17 MR. JACKSON: Thank you.

18 BY MR. JACKSON:

19 Q Mr. Albert, did that refresh your recollection
20 as to the colloquy that you had with someone questioning
21 you about this issue in June of 2023?

22 A Yes.

23 Q And, in fact, you testified as follows: (As
24 read), "Question: Is there -- can you just -- but."
25 Then you.

1 MR. LALLY: Objection, Your Honor, as far as
2 the reading.

3 THE COURT: As far as what?

4 MR. LALLY: Reading from the transcript. He's
5 asking if his memory is refreshed.

6 THE COURT: All right. So go ahead and ask
7 him a question.

8 BY MR. JACKSON:

9 Q Did you, in fact, say in answer to the
10 question (as read), "If it's not your wife and it's not
11 your dog, who else is it possible on earth to answer
12 this phone?

13 "Answer: Yeah. It's only possible that it's
14 me."

15 Did you say that?

16 A Yes.

17 Q Just before the break, I was asking you about
18 those, as you indicated, many phone calls that you
19 traded between and among your family members and
20 friends, including Brian Higgins. Do you recall that?

21 A Yes.

22 Q Were those many calls an effort to get your
23 stories straight about how you were going to -- what
24 statements you were going to give to law enforcement and
25 how you were going to testify if this case ever went to

1 trial?

2 A No. Absolutely not.

3 Q Were those calls or those mini-calls an effort
4 to coordinate narratives between you and your friends
5 and your family?

6 A No.

7 Q Were those mini-calls in any way discussing
8 the fact of creating a story of mysterious butt-dials?

9 MR. LALLY: Objection.

10 THE COURT: Sustained.

11 MR. JACKSON: May I have one moment, Your
12 Honor?

13 THE COURT: Yes.

14 MR. JACKSON: Thank you, Your Honor. I have
15 nothing further.

16 THE COURT: Okay. Mr. Lally?

17 MR. LALLY: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. LALLY:

20 Q Good afternoon, sir.

21 A Good afternoon.

22 Q Now, you were asked some questions about the
23 week prior to being at the Waterfall. At some point,
24 you were at the Hillside, correct?

25 A Yes.

1 Q You were there with friends and family; is
2 that correct?

3 A Yes.

4 Q And you weren't specifically there with either
5 Mr. O'Keefe or the defendant, correct?

6 A No, I was not.

7 Q And same with respect to the Waterfall on
8 January 28th. You were there with friends and family;
9 is that correct?

10 A Yes.

11 Q You weren't specifically there with
12 Mr. O'Keefe or the defendant, correct?

13 A No. They came unrelated to anything I was
14 doing.

15 Q And you were shown some video from the
16 Waterfall from January 28th in which you were speaking
17 at a sort of section of the table, correct?

18 A Yes.

19 Q And was the defendant the only person in that
20 section of the table?

21 A No.

22 Q There were other people around her, behind
23 her; is that correct?

24 A Yes. It looked like there were other people
25 at the table as well as situated right behind where she

1 was sitting.

2 Q And those other people around her or behind
3 her, those are people that you knew far better on
4 January 28th than the defendant?

5 A Yes. Those are my relatives and friends, and
6 that's why I was at that location.

7 Q Now, you were asked some questions about going
8 over to Ms. McCabe's house later on in the afternoon of
9 the 29th, correct?

10 A Yes.

11 Q And why did you go over there?

12 A I went to Jen's house because she's my sister-
13 in-law. She was going through an awful time that
14 morning, as we all were. And I wanted to be there to
15 comfort her if she needed anything. Because we are so
16 close, I didn't want her to feel like this was too much
17 for her to handle.

18 Q And, again, how long have you known
19 Ms. McCabe?

20 A I've known Jen since she was probably six or
21 seven years old. She's like a sister to me.

22 Q Now, at your home on January 28th, into
23 January 29th when people came back after the Waterfall,
24 did you at any point in time go into the basement area
25 of your home?

1 A No.

2 Q Did Brian Higgins at any time go into the
3 basement area of your home?

4 A Not that I know of.

5 Q Did you see anyone go into the basement area
6 of your home during the time that you were there after
7 coming home from the Waterfall?

8 A No.

9 Q Now, you were asked some questions about your
10 dog, Chloe and that she wasn't great with strangers.
11 What exactly did you mean by that?

12 A All I meant was that she wasn't overly
13 affectionate with strangers. She's a heavy dog. Not
14 everybody likes dogs. So if there's going to be people
15 at the house that don't know the dog, they might not
16 particularly want her around them.

17 Q And were you more concerned about the people
18 in the house that didn't know Chloe or are you more
19 concerned about Chloe, herself?

20 A The people in the house. Never has the dog to
21 my knowledge been aggressive to anybody except for the
22 time that there was a fight between two dogs.

23 Q Now, you were shown Exhibit 66. That was sort
24 of a drawing of your house. do you recall that?

25 A Yes.

1 Q And had you ever seen that prior to today?

2 A No.

3 Q And do you recall specifically within the
4 drawing or the artist's rendering of your house there
5 were certain lights on around the garage and the front
6 door?

7 A I did notice that. Yes.

8 Q And do you recall whether or not those lights
9 were on when you came home from the Waterfall on January
10 29th?

11 A I don't recall. But oftentimes, those lights
12 are off and sometimes the bulbs don't even work.

13 Q And, when Ms. McCabe comes into your bedroom
14 sometime after 6:00 a.m. on the 29th --

15 A Yes.

16 Q -- that was following a day in which you woke
17 up in New York City and went to a funeral; is that
18 correct?

19 A Yes. I went to a funeral that morning in
20 New York.

21 Q And that was for a fallen police officer from
22 the New York City Police Department?

23 A Yes. A police officer in New York that had
24 been murdered while on duty, and that was his funeral.

25 Q And did you know that police officer whose

1 funeral you attended?

2 MR. JACKSON: Objection.

3 THE COURT: The objection is sustained. Next
4 question.

5 BY MR. LALLY:

6 Q Now, with reference to -- you then drive all
7 the way home from New York to Massachusetts, correct?

8 A Yes.

9 Q And you went out to a couple of different
10 places, had a couple of drinks, correct?

11 A Yes.

12 Q And then went back to your home and went to
13 bed sometime around 2:00 a.m. or so?

14 A Yes. After two.

15 Q And so about how long had you been asleep from
16 the time that you dozed off to the time that Ms. McCabe
17 comes into your bedroom that morning?

18 A Only a few hours. Probably three, four hours.
19 Three and a half, four hours.

20 Q Now, in relation to waking up that morning,
21 you testified that you did not go outside, correct?

22 A Yes.

23 Q And why not?

24 A Initially when I woke up and I was told what
25 was going on out front, I looked out my window, and I

1 saw some emergency vehicles. I did not see John at that
2 time. I came downstairs with my wife, and she asked
3 where was John. And Jen said that he --

4 MR. JACKSON: Objection.

5 THE COURT: Sustained. Next question.

6 BY MR. LALLY:

7 Q What was your understanding of where
8 Mr. O'Keefe was when you came downstairs?

9 MR. JACKSON: Objection.

10 THE COURT: Ask it differently, Mr. Lally.

11 BY MR. LALLY:

12 Q In reference to when you came downstairs, what
13 was your understanding of medically what was going on
14 outside your house?

15 MR. JACKSON: Objection.

16 THE COURT: The objection is sustained.

17 BY MR. LALLY:

18 Q Was there any reason for you to go outside of
19 your house at that time?

20 A No.

21 Q Why not?

22 A At that time, there was no victim out in front
23 of my house. So there was no first aid for me to give.
24 There was nothing for me to give. There was nothing I
25 could do.

1 Q Now, you were asked some questions about the
2 sort of bulkhead in the back of your house, correct?

3 A Yes.

4 Q Where is that bulkhead in relation to the bay
5 windows or the kitchen that you were testifying about
6 earlier?

7 A So the bulkhead door is directly under the bay
8 windows in the kitchen. The bulkhead door opens up,
9 almost directly into the windows, obviously without
10 hitting them, but it opens up into the front of the bay
11 windows.

12 Q And what you saw as far as that video that was
13 shown to you, that's not what the bulkhead looked like.
14 That's not what the door looked like at that time on
15 January 28th or 29th of 2022?

16 A No. Those are not the doors we had.

17 Q And, as far as the bulkhead was concerned,
18 when that bulkhead was open around that time, what, if
19 any, kind of noise would that bulkhead make?

20 A A loud, creaking, old rusty metal sound when
21 you opened it.

22 Q Was that something that if it was opened and
23 you were in the kitchen area, you could hear it?

24 A Yes.

25 Q Now, in reference to that bulkhead, what, if

1 any, security or what -- was it open? Was it locked?

2 How was that left?

3 A So the bulkhead door was shut, and it was
4 broken. So sometimes you could turn the metal thing to
5 lock it and sometimes it would be hard to do. But the
6 wooden door that goes into the basement has a lock on
7 the doorknob. That is a door that we keep locked
8 because we don't use it.

9 Q Now, as far as from the bulkhead, you were
10 shown in that video a gate that opens up to the front
11 yard area of the house; is that correct?

12 A Yes.

13 Q And what, if any, other gates are located on
14 the fence in your backyard?

15 A So we also have a gate on the rear part of the
16 fence. And there is also a gate on the opposite of the
17 house.

18 Q And the gate in the rear area of the fence,
19 where does that lead to?

20 A So that leads to some woods, and then
21 eventually you'll hit some train tracks.

22 Q Now, with respect to your phone, that was
23 something that you had upgraded prior to any
24 notification that you had received from the district
25 attorney's office or anything in relation to preserving

1 the phone; is that correct?

2 A Yes.

3 Q Now, with respect to that, as far as the
4 information contained within the phone, there are
5 certain types of information, are you familiar with,
6 being sort of backed up by the cloud?

7 A Yes.

8 Q Would that include calls?

9 A It could.

10 Q Could that also include texts?

11 A Yes.

12 Q Could that include photos?

13 A Yes.

14 Q Could that include contacts?

15 A Yes.

16 Q And the information that you were shown as far
17 as certain call logs or call records, as far as you
18 know, was that generated after that September of 2022
19 date?

20 A Yes.

21 Q Now, with respect to the preservation, that
22 was in regard to a motion that counsel had filed for
23 your physical phone, correct?

24 A Yes.

25 Q Are you also aware of a judge's order denying

1 that repeatedly as far as them gaining access to your
2 physical phone?

3 MR. JACKSON: Objection.

4 THE COURT: I'll allow it.

5 THE WITNESS: Yes. It was denied on multiple
6 occasions.

7 THE COURT: I'll strike the "multiple
8 occasions."

9 BY MR. LALLY:

10 Q You were asked some questions about boxing,
11 correct?

12 A Yes.

13 Q And the boxing that you did, that was in
14 relation to a group associated with the Boston Police
15 Department; is that correct?

16 A Yes.

17 Q And when was the last time that you were
18 involved in any kind of actual boxing match?

19 A Close to 20 years ago.

20 Q Now, with respect to some of the training that
21 you were talking about, with respect to the Boston
22 Police Department, you were given some training as far
23 as defensive tactics; is that correct?

24 A Yes.

25 Q And is that something that is standard that is

1 sort of given and administered to every Boston police
2 officer?

3 A Yes. Within the academy, you go to the
4 defensive tactics training.

5 Q And that would include John O'Keefe, correct?

6 A Yes.

7 Q Now, as far as your house where you used to
8 live at 34 Fairview Road, what, if anything, did you
9 observe or notice with reference to cell phone reception
10 in that area of your home?

11 A So oftentimes using the phone within my house,
12 it seemed like it was, and it's a slang term, a dead
13 zone for the phone. The reception wasn't great.

14 Q And is that something that occurred over the
15 time that you lived there?

16 A Yes.

17 Q Now, with reference to the phone and prior to
18 the intimate moment that you shared with your wife
19 sometime after 2:00 a.m., do you recall whether or not
20 the phone screen was locked at that time? Were you
21 checking that at that particular time?

22 A I don't recall the exact timing, but I know
23 that it was opened sometimes and then it was closed,
24 obviously, at some point. But I don't know the exact
25 time.

1 Q So the phone may not have been locked at the
2 time that you began that situation with your wife?

3 A It may not have been.

4 Q With reference to the call logs and phone
5 records that you were on the phone, to the best of your
6 memory, is that the entirety of the phone calls that you
7 made around that time?

8 A No. It looks like it's selective people and
9 numbers.

10 Q And, with respect to those conversations, if
11 you recall, what, if anything, in general terms were you
12 discussing with either those people in the logs or other
13 people in general?

14 A In general, I'm sure there was some discussion
15 about the awful thing that had taken place. And there
16 may have been other calls unrelated, as well.

17 MR. LALLY: May I have one moment, Your Honor?

18 THE COURT: Yes.

19 BY MR. LALLY:

20 Q Mr. Albert, on the early morning of January
21 29th, 2022, did John O'Keefe ever come into your house
22 that night?

23 A John never came into my house that night. He
24 would have been welcomed, and the defendant would have
25 been welcomed with open arms had they come in. And I

1 wish they had. I really do.

2 Q Were you ever even aware that John O'Keefe or
3 the defendant were anywhere in the area of your house
4 during that early morning of January 29th?

5 A I was not.

6 MR. LALLY: I have nothing further, Your
7 Honor.

8 MR. JACKSON: Your Honor, very briefly.

9 THE COURT: Okay.

10 RECROSS-EXAMINATION

11 BY MR. JACKSON:

12 Q Mr. Albert, you talked about cell phone
13 reception not being good in your house. When did you
14 and Mr. Lally talk about that cell phone reception
15 issue?

16 A What?

17 Q The cell phone reception issue in your house.

18 A It came up during one of the preps.

19 Q Which prep?

20 A I don't really remember which prep. Probably
21 the last one.

22 Q I thought you only had one prep with
23 Mr. Lally.

24 A Well, we had the prep before the grand jury,
25 and then I had the prep for this trial. That's two.

1 Q So you brought up the fact that you had bad
2 cell phone reception in that preparation?

3 A The conversation came up, yes.

4 Q Was Mr. Lally taking notes?

5 A I don't recall if he was taking notes.

6 Q Was this recorded?

7 A I don't believe so.

8 Q And where did you say this conversation took
9 place?

10 A So the prep was at the district attorney's
11 office which is in Canton.

12 Q This morning when I asked you, you said you
13 couldn't quite remember where it took place.

14 A You're right. I couldn't remember this
15 morning.

16 Q And I asked you could it have been the D.A.'s
17 office. And now your memory is refreshed?

18 A Yes.

19 Q What refreshed your memory between this
20 morning and now?

21 A I was just thinking about it in my head and
22 reminded myself that it was the D.A.'s office. You
23 caught me off-guard when you had asked me. I didn't
24 have it at the top of mind.

25 Q Did you talk to Mr. Lally over the lunch hour?

1 A Briefly.

2 Q Did you bring up the fact that you had bad
3 cell reception over the lunch hour?

4 A Just now, no.

5 Q What did you talk about over the lunch hour?

6 A Just what was -- how much time I was going to
7 have left on the stand. That was really about it.

8 Q So you and Mr. Lally talked about the fact
9 that you'd been on cross-examination for two and a half
10 hours and your conversation consisted of, you've
11 probably got another 10 minutes?

12 A Yeah. I think he was going to lunch or doing
13 something. So...

14 Q So you didn't talk about the substance of your
15 testimony?

16 A No.

17 Q He didn't tell you what questions he was going
18 to ask you on redirect?

19 A He maybe mentioned one thing he may ask me,
20 but that was it.

21 Q Like what was that?

22 A Just he was going to ask about what happened
23 at the house in the morning. You know, some of the
24 questions on redirect. That's all.

25 Q Meaning he was going to ask you the question

1 about whether John came in the house?

2 A No, not necessarily.

3 Q He was going to ask you about whether or not
4 you had bad cell reception at the house?

5 A No.

6 Q What was he going to ask you?

7 A He was going to ask about the morning of the
8 incident, about coming downstairs and why I didn't go
9 outside.

10 Q Did he tell you what he thought would be
11 helpful for the Commonwealth?

12 A No.

13 Q Did he tell you how he thought you should
14 answer that question?

15 A No.

16 Q He did ask you about a situation concerning
17 motion to preserve, correct?

18 A No.

19 Q I'm sorry. He asked you on redirect about the
20 motion to preserve?

21 A Oh, yes. Yes.

22 Q Okay. And he mentioned that there was a
23 motion that had been denied for us to get, for the
24 defense, to get access to your physical phone, correct?

25 A Yes.

1 Q You're aware that that motion was denied in
2 October of 2022, correct?

3 A Yes.

4 Q You had already gotten rid of your phone a
5 month earlier, hadn't you?

6 A Yes.

7 Q And the preservation order from the judge was
8 still in place when you got rid of that phone, wasn't
9 it?

10 A No. I believe the phone was upgraded prior to
11 the preservation order.

12 Q Oh. Right. The day before.

13 A Yes.

14 Q Got it.

15 MR. JACKSON: That's all I have, Your Honor.

16 THE COURT: All right, Mr. Albert. You are
17 all set, sir.

18 THE WITNESS: Okay. Thank you. Thank you,
19 jury.

20 (Whereupon, the witness is excused.)

21 THE COURT: Your next witness, Mr. Lally?

22 MR. LALLY: Yes, Your Honor. The Commonwealth
23 would call Brian Albert, Jr. to the stand.

24 THE COURT: Okay.

25 MR. LALLY: Your Honor, with the Court's

1 permission, the papers that were left up there with
2 the last witness, I don't think they were marked as
3 anything.

4 THE COURT: Okay.

5 Whereupon,

6 BRIAN ALBERT, JR.

7 having been first duly sworn, was examined and testified
8 under oath as follows:

9 THE COURT: Okay. Whenever you're ready,
10 Mr. Lally.

11 MR. LALLY: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. LALLY:

14 Q Good afternoon, sir.

15 A Good afternoon.

16 Q Could you please state your name and spell
17 your last name for the jury?

18 A My name is Brian Albert, Jr. And it's
19 A-L-B-E-R-T.

20 Q And where do you live, sir?

21 A I live currently in Norwood, M-A.

22 Q And how long have you lived in Norwood?

23 A I believe since last -- I think it's about a
24 year. Since last May.

25 Q And, prior to moving to Norwood, where did you

1 live before that?

2 A I lived in Canton.

3 Q And where specifically in Canton did you live?

4 A 34 Fairview Road.

5 Q How long was it, sir, that you lived at 34
6 Fairview Road?

7 A I'm going to guess, but I'm going to say maybe
8 about 10 years.

9 Q And how old are you now, sir?

10 A I'm 25.

11 Q And with respect to both where you live in
12 Norwood and where you lived in Canton, who, if anyone,
13 did you live there with?

14 A Well, when I lived in Canton, I lived at one
15 point with my four siblings, but then some of them moved
16 out. And then in Norwood now, it's basically just me
17 and my parents, and two of my siblings are at school.
18 So they come home in the summer and stuff.

19 Q And by your parents, your father's name is
20 Brian Albert, as well; is that correct?

21 A Yes.

22 Q And your mother's name is Nicole?

23 A Yes.

24 Q Now, do you work, sir?

25 A Yeah, I do. I work in I.T.

1 Q And how long have you been doing that?

2 A That job will be a year, maybe a year in
3 August, I believe.

4 Q Now, sir, if I could turn your attention to
5 the time frame of January 28th, 2022, into January 29th,
6 2022. Do you recall that specific time frame?

7 A Yes, I do.

8 Q And, with the 28th and the 29th, do you know
9 roughly what days of the week that was?

10 A Maybe Friday and Saturday, I believe.

11 Q And, with respect to the 28th or the 29th,
12 what, if any, significance do those dates have to you?

13 A Yes. So the 29th is my birthday. The 28th
14 was the day before my birthday, obviously. So I had a
15 few friends over for my birthday.

16 Q And do you recall how old you were turning on
17 the 29th of 2022?

18 A That was about two years ago? So I would be
19 23. Twenty-three, I think. Yeah. Twenty-three.

20 Q Now, in the week leading up to that weekend,
21 what, if any, plans did you have with respect to sort of
22 the night before and the night of your birthday?

23 A Yeah. So I was kind of up in the air. I
24 didn't know if I wanted to go out. I'm kind of a
25 homebody person. I just stay at home. So I was kind of

1 up in the air.

2 So my plan was to have some of my friends over
3 to my house. We would eat, have a couple of drinks.
4 And then I would decide then if I wanted to go out
5 locally in Canton or not. So that was my plan.

6 And then a few days before, that's when we
7 found out that the snowstorm was going to happen,
8 because you know how they always say it's going to snow
9 and it never does. So then that kind of threw a wrench
10 in it. But I was kind of, like, we'll see what happens.
11 And so we went along with the plan.

12 Q And that particular evening of January 28th,
13 at some point, people came over to your house; is that
14 correct?

15 A Yes.

16 Q And about what time was it that your friends
17 first started coming over to the house?

18 A I would say my friends first arrived probably
19 around 7:30 p.m.

20 Q And who were the first of your friend group
21 that came to your house that night?

22 A The first two were Sara and Julie.

23 Q And, just for the record, Sara's last name is
24 what?

25 A Levinson.

1 Q And Julie's last name is what?

2 A Nagel.

3 Q And, with respect to them coming over to your
4 house, was there anybody else from your household or
5 family or anybody else that was present when Sara and
6 Julie stopped by?

7 A I believe when they first got there, my mom
8 was still at the house. She hadn't left yet to go out
9 where she was going.

10 Q Do you know where she was going that night?

11 A I believe she was going to the Waterfront Bar
12 & Grille.

13 Q And do you know who, if anyone, she was going
14 there with?

15 A Yes. She got picked up by my Aunt Julie.

16 Q Now, Ms. Levinson and Ms. Nagel, how long have
17 you known them?

18 A I've know them, I would say, since high
19 school. I think I was a sophomore and they were a year
20 older than me. They were a junior. So probably a good
21 seven, eight years, nine years, 10 years.

22 Q And, when they came over to your house, what
23 was it that you did?

24 A Well, we were just hanging out. I had a few
25 more friends who were on their way. So they came after.

1 Probably at around 8:00 o'clock, I would say, 8:15, they
2 were there. And we were just all hanging out, listening
3 to music. We ate some food. I think we played some
4 card games. Just normal hangout stuff.

5 Q And, over the course of this evening, did
6 yourself and your guests, did you also have some
7 alcohol?

8 A Yeah. People were drinking. Yeah.

9 Q Do you recall, generally speaking, what people
10 were drinking?

11 A Mostly like seltzers, like White Claws,
12 Trulies and stuff like that.

13 Q Now, you mentioned that some other friends
14 came about a half hour or so after Julie and Sara
15 arrived; is that correct?

16 A Yes.

17 Q And who were they?

18 A They are -- do you want their full names or --

19 Q Please.

20 A Okay. They are Kathryn Doody, Emily Fabbiano,
21 Courtney Alba, and I think that's it that I can recall
22 as I sit here.

23 Q And, with respect to those other friends, how
24 did you know them? How long did you know them?

25 A I knew everyone from school. We all went to

1 high school together. So the other ones were in my
2 grade. So we were closer friends because they were in
3 my grade. So I've known them for a long time.

4 Q And, just to be clear, when you say "from
5 school," are you talking about high school?

6 A High school, yes.

7 Q And you went to Canton High School; is that
8 right?

9 A Yes, I did.

10 Q Now, with respect to having your friends over
11 your house, where sort of within the house were you all
12 sort of hanging out?

13 A We would all just kind of hang out probably, I
14 would say, mostly in the dining room. The dining room
15 and the kitchen were kind of like one big open space.
16 So we would be like in the kitchen or the dining room.
17 And sometimes I think we may have like walked into the
18 family room area and sat down for a little bit. But
19 mostly it was just the dining room and the kitchen.

20 Q And the family room area, is that visible from
21 the kitchen and the dining room area?

22 A There is a wall, but there is a doorway, a
23 door frame. So you can't see all of the family room but
24 you can see a good amount of it, yeah.

25 Q And, as far as each of your respective friends

1 that you were testifying came over to your house that
2 night, do you have any idea of how they got there?

3 A No. I don't know. None of them drove. I
4 know that. So I would assume that they got dropped off
5 by someone. But I don't know.

6 Q So there wasn't like a pile of cars like out
7 in front of your house at any point during the evening?

8 A No, there wasn't.

9 Q Now, later on that evening, who, if anyone
10 else, came by the house?

11 A Well, my cousin, Colin, arrived at the house
12 at some point. And then my mom and my dad and them came
13 back from the Waterfall, back to the house at some
14 point, as well.

15 Q Now, with respect to your cousin, Colin, his
16 last name is Albert, as well?

17 A Yes.

18 Q Okay. And how is he related to you?

19 A He is my first cousin. He is my dad's
20 brother's son.

21 Q And his father would be Christopher Albert; is
22 that correct?

23 A Yes.

24 Q And is he older, young?

25 A Is Colin younger than me?

1 Q Yes.

2 A Yes, he is.

3 Q And about how old was Colin around this time?

4 A Maybe 17, I think.

5 Q So was he in high school around this time?

6 A I would assume so, yes.

7 Q And, if you recall, how was it sort of that
8 Colin came over to your house that night? Did he reach
9 out to you at any point? Did you reach out to him?

10 A Yeah. I don't exactly recall how he -- I
11 don't know how he knew that I was at my house. But, at
12 some point, he did call me and said, oh, are you still
13 at your house? And I said, yes. And he said, do you
14 mind if I come by? And I said, no, of course you're
15 welcome to come by.

16 Q And, with regard to earlier at your house when
17 you indicated that your mother went out to the
18 Waterfall, she went out with Julie Albert, correct, and
19 that's your aunt?

20 A Yes.

21 Q And I'm sorry. I asked you about three
22 different questions.

23 A No. That's all right.

24 Q But, as far as Colin is concerned, Julie is
25 Colin's mother?

1 A Yes.

2 Q Okay. Do you recall about what time it was
3 that Colin came by the house?

4 A I don't recall exactly. I would say maybe
5 close to maybe 10:45, 11:00 p.m.

6 Q And, as far as the other people at the house,
7 the women that you had over, did Colin know any of them
8 that you knew of?

9 A Yeah. Colin knew some of them just from being
10 in the same town and Colin's older brother is just one
11 year older than me. So Colin's brother is in some of
12 the grade of some of the girls, in the grades of some
13 the girls that were there. So that's how he knew.

14 Q And, just to be clear, Colin's older brother
15 is also named Christopher Albert?

16 A Yes.

17 Q Now, when Colin came over to the house as far
18 as the things that you were describing as far as hanging
19 out, is that essentially what continued after Colin's
20 arrival?

21 A Yeah. He was just another addition. We just
22 continued to do the same stuff, hanging out.

23 Q Now, with respect to within the home, you
24 mentioned sort of the kitchen, the dining area and the
25 family room. Were there other areas of the house that

1 anybody went to during the course of the evening?

2 A Not to my knowledge. I mean, there is a
3 bathroom, but it's just off the kitchen. So I assume
4 the bathroom. But that's really it. We didn't go
5 anywhere else than that first-floor area.

6 Q So mainly in the first floor; is that correct?

7 A Yes.

8 Q Did you see anybody at any time go down to the
9 basement?

10 A No.

11 Q Did you see anybody at any time go upstairs?

12 A Not to my knowledge, no.

13 Q Now, you mentioned that at some point your
14 parents and some people that were at the Waterfall came
15 to your house; is that right?

16 A Yes. So first my -- first, a group of my
17 friends had left my house. And I think that was
18 probably around -- they were only there for a few
19 minutes while Colin was there. So I would say probably
20 around 11:00, 11:10, a few select people left the house
21 to go home. So at that point, it was just me, Colin,
22 Julie Nagel and Sara Levinson at the house until my
23 parents arrived.

24 Q And so Courtney, Kathryn and Emily would have
25 left at some point shortly after Colin arrived?

1 A Yes.

2 Q And, when your parents came home, if you
3 recall, what was sort of the order of -- do you recall
4 about what time that was?

5 A I would say that would be right around
6 midnight, I would say. Maybe 12:05, 12:10-ish. In that
7 area.

8 Q And, just turning back to Colin for a second,
9 do you recall -- do you know how Colin came to be at
10 your house?

11 A Like how he was dropped -- like if he was
12 dropped off?

13 Q Yes. Do you know whether or not he drove
14 there, was dropped off there, similar to the other
15 people that you were talking to?

16 A Well, I know he didn't drive there, but I
17 would assume he got dropped off. He didn't say how he
18 got there.

19 MS. LITTLE: Objection, Your Honor.

20 THE COURT: All right. So we'll strike you
21 don't know how he got there.

22 THE WITNESS: Okay. Yeah.

23 BY MR. LALLY:

24 Q And, as far as the order of people that
25 arrived back at your home, who were the first people to

1 arrive back at your home from the Waterfall?

2 A The first people to arrive were my mom;
3 my dad; my sister, Caitlin; and my dad's friend,
4 Brian Higgins.

5 Q Prior to that evening of January 28th, had you
6 met Mr. Higgins before?

7 A I don't recall ever meeting him. I could have
8 met him in passing. But I don't ever formally remember
9 meeting him. No.

10 Q Do you recall ever seeing him at your house at
11 Fairview Road prior to that evening?

12 A I don't think he'd ever been there that I had
13 saw, no.

14 Q And, as far as Colin was concerned, when your
15 parents and your sister and Mr. Higgins arrived, in
16 relation to that, when did Colin leave your house?

17 A Colin was actually getting up and leaving as
18 they were coming into the house.

19 Q And similar to, do you know how Colin left
20 your house or how he -- whether or not he drove or was
21 picked up or anything like that?

22 A Yeah. He was sitting at the table and I was
23 actually sitting right next to him. He stood up and
24 said, I'm leaving. Allie is picking me up. And so I
25 knew who Allie was because she's my cousin.

1 Q And what is Allie's last name?

2 A McCabe.

3 Q And she's your cousin, as well; is that
4 correct?

5 A Yes.

6 Q Is she Colin Albert's cousin?

7 A She's not Colin's cousin, no. She is my
8 cousin on my mom's side.

9 Q And so Colin would be your cousin on your
10 father's side?

11 A Yes.

12 Q And, following your father, your mother, your
13 sister and Mr. Higgins' arrival at the home, where did
14 they sort of congregate within the home?

15 A In the same area that we were. In the dining
16 room and the kitchen area. My mom got home, and I know
17 she went right to cleaning, because she likes to clean.
18 So she was in the kitchen, picking up. And yeah. We
19 were all just in that one area.

20 Q And, following their arrival back at the home,
21 who, if anyone, else showed up at your home that
22 particular evening?

23 A Then I would say maybe 10 minutes later, my
24 Auntie J.J. -- well, her name is Auntie Jen, but I call
25 her J.J. -- and Uncle Matt arrived at the house.

1 Q Your Auntie J.J. and your Uncle Matt, what is
2 their last name?

3 A McCabe.

4 Q And was that -- their arrival, was that before
5 or after Colin had left?

6 A Colin had already left at that point, yes.

7 Q And so the Allie that Colin was picked up by,
8 what, if any, relationship does she have to your
9 Auntie J.J. and your Uncle Matt?

10 A That's their daughter.

11 Q Now, throughout the course of the evening --
12 well, let me ask you this: As far as when was it that
13 the last person who didn't live at your house on
14 Fairview Road, when was it that the last person left?

15 A I wouldn't know. I couldn't tell you a time.
16 The last people to leave were Auntie J.J., Uncle Matt,
17 Sarah and Julie. I don't know exactly what time that
18 would be. I can't even guess. I don't know.

19 Q And you mentioned your sister, Caitlin; is
20 that correct?

21 A Oh, yes. I'm sorry. I was just thinking of
22 her as my sister, like a sibling. So she didn't live in
23 the house. So she was the last person to leave.

24 Q And, prior to her leaving is when your
25 Auntie J.J., Uncle Matt and --

1 A Yes.

2 Q So with respect to after your Aunt J.J. and
3 you uncle, Matt McCabe, arrived at the house, who, if
4 anyone else, came by the house that you were aware of?

5 A No one.

6 Q Well, let me ask it this way: As far as
7 anybody else following them actually physically come
8 into the house?

9 A No one else came into the house after them,
10 no.

11 Q And, at some point, were you aware or were you
12 made aware of someone out in front of your house?

13 A I saw someone outside of the house, yes. A
14 car.

15 Q And what was it that sort of drew your
16 attention to the front area of the house?

17 A Yeah. So at some point, my friend, Julie,
18 stood up and said, oh, my brother's outside. Her
19 brother was there to pick her up. And someone made a
20 comment, saying, oh, no --

21 MS. LITTLE: Objection, Your Honor.

22 THE COURT: Not what they said. What happened
23 as a result?

24 THE WITNESS: She went outside to talk to her
25 brother. And so I looked out the window at that

1 point, and she was outside, talking to her brother.
2 So his truck is there, and I saw another car there,
3 as well.

4 BY MR. LALLY:

5 Q And with respect to your friend, Julie Nagel,
6 her brother, what is his name?

7 A His name is Ryan Nagel.

8 Q And, if you recall the time that Julie gets up
9 and goes outside to talk to her brother, where were you
10 within the house?

11 A I was still sitting at the dining room table.

12 Q And with regard to that area of the dining
13 room table, how was it that you were able to see out in
14 the front of your house?

15 A There's two windows there. So I just turned
16 around and looked through the blinds.

17 Q And, when you looked through the blinds, what
18 is it that you saw out in front of your house at the
19 time?

20 A Yeah. So I saw a truck, which was
21 Julie Nagel's brother's truck, I believe. And that was
22 a little ways, almost like in front of the driveway of
23 the house. And then a little ways in front of it, there
24 was another car that I hadn't recognized before. It was
25 a dark SUV-ish. And that's all I knew about it and

1 could see about it.

2 Q Now, similar to yourself, who, if anyone else,
3 sort of from the group of people either in the kitchen
4 or in the house did you observe near a window or a door
5 that was looking out in that direction?

6 A I believe my Uncle Matt McCabe noticed the car
7 outside, as well.

8 Q And, with respect to the dark SUV that you
9 didn't recognize and what you thought was Julie Nagel's
10 brother Ryan's truck, was there anything between the
11 truck and the dark SUV that you saw outside?

12 A Not to my knowledge. I didn't see anything,
13 no.

14 Q And, as far as the weather, when you looked
15 outside, what, if anything, did you note about the
16 weather?

17 A It was definitely snowing. I wouldn't know
18 how many inches. But I would say a good inch or two of
19 snow at that point.

20 Q Now, with regard to being out in front of your
21 house, those two vehicles, do you recall which direction
22 they were facing?

23 A Yeah. They were both facing going up Fairview
24 towards Cedarcrest. So whatever this is. I don't know.

25 Q Let me ask it probably in a better way. As

1 far as what was facing towards your house, was that the
2 driver's side or the passenger's side of each of the
3 vehicles?

4 A That would have been the passenger side.

5 Q And that's with respect to both vehicles; is
6 that correct?

7 A Yes.

8 Q Now, at any point in time during the time that
9 these vehicles were out in front of your house, do you
10 recall hearing anything or any sort of noises coming
11 from the front of your house that drew your attention?

12 A No. I didn't hear anything. No.

13 Q And, as far as looking out the windows and
14 seeing these vehicles in front of your house, how many
15 times did you look out?

16 A I believe I looked out that one time. And
17 then I think I looked out one more time after that.

18 Q And, as far as your friend, Julie, if you
19 know, about how long was she out in front of your house
20 at that time?

21 A I would say not more than five minutes. More
22 likely about three or four minutes she was outside.

23 Q And did you see her outside in relation to the
24 truck, as well?

25 A Yeah. I saw her at the passenger door of the

1 truck.

2 Q Now, that vehicle that you observed that you
3 didn't recognize, the darker black SUV, was that vehicle
4 in one place or more than one place during the times
5 that you looked out the window and saw?

6 A Yeah. So the first time I looked, I would say
7 it was closer towards the mailbox, maybe a little bit in
8 front of the mailbox. And then the second time, the
9 last time I looked out the window, it had moved further
10 down, closer to, I'll say, the flagpole. So closer that
11 way. It went down that way towards the flagpole.

12 Q So closer to the -- there is an area in the
13 front of your house where there is a flagpole; is that
14 right?

15 A Yes.

16 Q Now, as far as when it moved as far as the
17 weather and the snow was concerned, could you see
18 anything in relation to the roadway in behind the SUV
19 once it had moved from that initial position to the
20 following position by the flagpole?

21 A Yes. I had noticed just some tracks in the
22 snow indicating that the car had moved up.

23 Q Now, your friend, Julie, did she take that
24 ride home with her brother, Ryan, at that time?

25 A No. She came back in the house.

1 Q And, as far as your friends, Julie and Sara,
2 who were still at the house when people from the
3 Waterfall came home, do you know how they happened to go
4 home on that particular evening?

5 A Yes. My Aunt J.J. McCabe and Matt McCabe
6 drove them home.

7 Q And do you have any idea about what time that
8 was?

9 A No, not really. I would be guessing. I would
10 say maybe one-something, maybe.

11 Q Now, with respect to your sister, Caitlin, who
12 you indicated was the last person to leave the home that
13 evening; is that correct?

14 A Yes.

15 Q Were you awake or downstairs at the time that
16 your sister left?

17 A I don't know if I was downstairs when she
18 actually left. But I was down there for a minute when
19 she was the last one present at the house with my mom.

20 Q And do you know how she was leaving the house
21 that night or how she was getting home?

22 A Yeah. I believe her boyfriend was picking her
23 up.

24 Q And what is her boyfriend's name?

25 A Tristin Morris.

1 Q Now, sir, if I could turn your attention to
2 the following morning. At some point, you go to bed.
3 Do you know about what time that it was that you went to
4 bed?

5 A I would say late 1:00, early 2:00 o'clock in
6 the morning.

7 Q And your bedroom is in the second floor of the
8 house; is that correct?

9 A Yes, it is.

10 Q And, with respect to -- how many bedrooms are
11 up on the top floor of the house?

12 A Four, I believe.

13 Q And, with respect to your bedroom, where was
14 that in relation to sort of the layout of the house?

15 A My bedroom would have been the middle back of
16 the house. So I had two windows, but they were in the
17 backyard of the house. So the middle of the backside.

18 Q So the two windows from your bedroom face the
19 backyard area?

20 A Yes.

21 Q Now, at any point in time after you went up to
22 your room, the same question as before. Were there any
23 noises or anything that drew your attention outside of
24 the home at any point prior to your waking up?

25 A No. I didn't hear anything.

1 Q And, if you know, about what time was it that
2 you woke up later on that morning of the 29th?

3 A I can't recall the exact time. I'd say maybe
4 -- I know in previous testimony I may have said earlier.
5 But I don't believe it was that early. I would say
6 7:30, 8:00 a.m.

7 Q What was it that woke you up then?

8 A My dad had knocked on my door.

9 Q And, without anything specifically that you
10 and your dad talked about, following that conversation,
11 where did you go?

12 A I just threw on some clothes and I went
13 downstairs into the main first floor of the house.

14 Q When you came downstairs into the main first-
15 floor area of the house, who, if anyone, did you see?

16 A Yeah. So when I went down there, it was my
17 mom, my dad, my Auntie Jen and my Uncle Matt.

18 Q And about how long were you down in that area
19 of the home for?

20 A I would say the first time I went down there,
21 I would say I was down there for maybe 15 minutes or so.

22 Q When you say the first time you went down,
23 were there subsequent times after that?

24 A Well, yes. I went back up into my room after
25 I was down there the first time. And then I came back

1 downstairs. And, at that time, there was no one there
2 besides me and my parents.

3 Q And that second or subsequent time that you
4 came downstairs that morning, do you know about how long
5 it was after the first time?

6 A I would say an hour and half, two hours,
7 maybe.

8 Q Now, with respect to your birthday as far as
9 what if any sort of ritual or thing do you have with
10 regard to your Aunt Julie?

11 A Oh, yes. So my aunt likes to get me donuts.
12 It started, I don't even know, probably like when I was
13 in middle school because I used to really like donuts.
14 So every birthday, she would give me six donuts in a box
15 and a card. And that was just our ritual. She'd bring
16 it over every time it was my birthday.

17 Q And did you get those as far as the donuts and
18 the card and everything at some point on that particular
19 morning?

20 A Yes. I believe that when I went downstairs
21 the first time, the donuts and the card were there
22 already. So I had known that she had come by and
23 dropped them off for me.

24 Q Did you physically actually see your
25 Aunt Julie on that particular morning?

1 A No. I didn't see her then.

2 MR. LALLY: Your Honor, may I approach?

3 THE COURT: Yes.

4 BY MR. LALLY:

5 Q Sir, I'm going to show you a series of four
6 photographs. I'd just ask you to look at those to
7 yourself and then look up when you are finished.

8 A Okay.

9 Q And, just generally speaking, do you recognize
10 what's depicted in those photographs?

11 A Yes. This is my old residence.

12 Q Your old residence at 34 Fairview Road; is
13 that correct?

14 A Yes.

15 Q Generally speaking, what's depicted in those
16 photographs, is that a fair and accurate portrayal of
17 what the house looked like around that time?

18 A Yes.

19 MR. LALLY: May I approach again, Your Honor?

20 THE COURT: Yes.

21 MR. LALLY: The Commonwealth would seek to
22 introduce and admit as the next four exhibits.

23 THE COURT: Any objection, Ms. Little?

24 MS. LITTLE: No objection, Your Honor.

25 THE COURT: Okay.

1 (Whereupon, four photographs outside 34 Fairview
2 Road were entered and marked Exhibits No. 70
3 through and including 73 in Evidence.)

4 THE COURT REPORTER: Exhibits 70 through 73,
5 Your Honor.

6 THE COURT: Thank you.

7 MR. LALLY: May I return to the witness, Your
8 Honor?

9 THE COURT: Yes.

10 BY MR. LALLY:

11 Q I'm just going to place before you what has
12 now been marked as Exhibit 70, 71, 72 and so on. Just
13 hold onto those.

14 MR. LALLY: And, Your Honor, with the Court's
15 permission, I would ask that those three
16 photographs be published in succession to the jury?

17 THE COURT: Okay.

18 MR. LALLY: And, Ms. Gilman, if I could first
19 have I believe it's 2592.

20 BY MR. LALLY:

21 Q And, sir, what's up on the screen, is that
22 what you have before you as, I believe it should be,
23 Exhibit 71, probably?

24 A Yes. That's the same.

25 Q Again, just for the record, do you recognize

1 what's up on the screen now?

2 A Yes, I do.

3 Q Now, before I get into the photograph, there
4 is one other question I need to ask as far as with
5 respect to the sort of tenor and demeanor of that
6 evening, how would you describe sort of when your
7 friends were there until the time that the folks came
8 back from the Waterfall -- how was sort of the mood
9 within the house?

10 A Cheerful. Fun. Everyone was having a great
11 time.

12 Q Any fights? Any arguing? Any tension or
13 anything else that you noted of note with regard to
14 that?

15 A No, not at all.

16 Q And I believe, sir, there should be a laser
17 pointer on the desk there. Just push the button on the
18 top.

19 A Yes.

20 Q I want to ask you a question with regard to
21 the picture.

22 A Okay.

23 Q Now, with regard to the front area of your
24 house at 34 Fairview Road when you lived there, there's
25 basically two doors on the front of the house, correct?

1 A Yes.

2 Q And, if you could, just using that laser
3 pointer, direct the jury's attention to where in the
4 photograph you observe each of those two doors.

5 A So this would be the first door right here and
6 this was the second door (indicating).

7 Q And the first door that's sort of further away
8 from the driveway, is that sort of the front door area
9 of the home?

10 A Yes. That's the front door.

11 Q And the other door, where does that lead?

12 A That, the side door leads just right into the
13 family room.

14 Q And, as far as around this time of January
15 around this evening, if you recall, where were people
16 sort of coming in and going out of your house?

17 A I don't know. I couldn't tell you
18 specifically. I think some people used both doors.

19 Q And what we're calling sort of the front door
20 area -- I'm sorry. The one closer to the garage leads
21 into the living room; is that correct?

22 A Yes.

23 Q And so the front door further away from the
24 garage, where does that lead into?

25 A That's like a foyer area. And then if you

1 take a right, it leads you to the dining room, kitchen
2 and then keep going into the family room.

3 Q Now, if you don't take a right and go into the
4 kitchen and the dining room and then sort of the family
5 room and you just sort of go straight, where does that
6 lead you?

7 A Well, you can't really go straight. If you
8 walk in, a little ways to the left there's a set of
9 stairs that go upstairs. You can go straight a little
10 bit and then to the left, again, the stairs that go
11 downstairs into the basement.

12 Q Now, in addition to you, your mother, your
13 father, around this time in January of 2022, did you
14 have a pet, as well?

15 A Yeah. We had a dog, Chloe.

16 Q The dog's name was Chloe?

17 A Yes.

18 Q About how long at that point had you had
19 Chloe?

20 A We had her for a few years. I don't know
21 exactly how many years but a few years.

22 Q Now, on that night specifically of January
23 28th, leading into the 29th, did you do anything as far
24 as letting Chloe out to use the bathroom or anything
25 like that?

1 A Yes. So the dog was actually upstairs in my
2 parents' bedroom. She likes to sleep up there and stay
3 up there. So she was upstairs when my friends were
4 downstairs. And, at one point after my dad came home,
5 it was asked if someone let the dog out. And I said,
6 sorry, I forgot, because it was my responsibility
7 because I was the only one home. So he went upstairs to
8 get the dog, got the dog, brought her downstairs, let
9 her outside.

10 Q And so when someone would let Chloe outside
11 around this time, could you describe that process as far
12 as would it be a leash or just let her out or how?

13 A Yeah. So we had a fenced-in backyard. So we
14 just kind of led her to the back door, opened the door
15 and she was able to run around out back.

16 Q Whoever let her out, would they sort of stay
17 at the back door while she was out?

18 A Yeah. We'd stay around the kitchen area.
19 Yeah.

20 MR. LALLY: Ms. Gilman, if I could have the
21 next photo up on the screen, 2593.

22 Q So the next exhibit would be No. 72. What's
23 up on the screen, is that what you have before you, sir?

24 A Yes.

25 Q Now, if you could, with regard to this

1 photograph, you were mentioning something about a
2 flagpole in the area of your front yard; is that
3 correct?

4 A Yeah.

5 Q Using that laser pointer, if you could direct
6 the jury's attention to where that was?

7 A (Witness complies.)

8 Q Now, with respect to this photograph that's up
9 on the screen right now, Ms. Nagel's brother, Ryan, in
10 the pickup truck, where was -- if you could direct the
11 jury's attention to where it was about that you observed
12 that truck?

13 A He would have been more this way. So the
14 photo doesn't show you all. But he would have been more
15 in front of the driveway over here.

16 Q And that first time that you looked out the
17 window, where was the dark SUV?

18 A I believe that was right around the mailbox
19 area, right about right here.

20 Q And then if you could direct the jury's
21 attention to the second time that you looked out and the
22 SUV had moved, where had it moved to at that point?

23 A It was more down this way on the side of the
24 road.

25 Q Now, if you could, as far as the windows that

1 you're talking about in the kitchen area that you were
2 looking out of, do you see those in this photograph, as
3 well?

4 A Yes, I do.

5 Q And if you could direct the jury's attention
6 to where they would see them?

7 A Those two right there (indicating).

8 MR. LALLY: And, Ms. Gilman, if I could have
9 the last photograph in that set.

10 Q Again, what's up on the screen, sir, is that
11 what you have before you now as Exhibit 73?

12 A Yes.

13 Q And, again, this is another photograph of the
14 front area of your home taken around the time of January
15 2024, correct?

16 A Yes.

17 Q And, as far as the flagpole in this particular
18 area, that's off to sort of the left center of the
19 screen; is that correct?

20 A Yes.

21 Q Now, in between the time that you saw that
22 dark SUV that you didn't really recognize in the area of
23 the mailbox and then further down, did you see it at any
24 other point, moving along?

25 A No. I just caught as it had already moved.

1 By the time I looked out the window, I noticed that it
2 had moved up.

3 Q And facing in the same direction; is that
4 correct?

5 A Yes.

6 Q So the same passenger side door that was
7 facing your house?

8 A Yes.

9 Q And, as far as the dark SUV was concerned, at
10 any point in time, did you look out and not see the dark
11 SUV out there?

12 A No. I didn't look out the window again.

13 Q So for the rest of the evening, you didn't
14 look out the window?

15 A No.

16 Q Now, in reference to the time that expired
17 between the time that you saw it in the area of the
18 mailbox and the time that you saw it over by the
19 flagpole, do you have any idea how long a period of time
20 that was?

21 A I would say probably within a couple minutes.
22 It wasn't a long period of time that I looked out the
23 window.

24 Q And, as far as you know, your friend, Julie,
25 who had gone out to the pickup truck to talk to her

1 brother, Ryan, was she still outside around the time
2 that you looked out the second time?

3 A She could have been. I'm not sure if she was
4 at that point, but she could have been.

5 MR. LALLY: Ms. Gilman, you can take that
6 down.

7 May I have just one moment, Your Honor?

8 THE COURT: Yes.

9 BY MR. LALLY:

10 Q Just a couple more questions, sir.

11 With regard to that morning when you woke up
12 and your father was at your door, as far as from what
13 you could see of his person, what, if any, injuries or
14 anything did you observe on his person at that time?

15 A On my father?

16 Q Yes.

17 A Nothing.

18 Q Now, at that time, January 28th into January
19 29th, 2022, did you know anybody by the name
20 John O'Keefe?

21 A I knew of the name but I didn't know him
22 personally, no.

23 Q When you say you knew of the name or you knew
24 of him, how did you know him?

25 A I knew he was friendly with my Auntie J.J.,

1 Jen McCabe. And his niece was friendly with my cousin,
2 Jen's daughter.

3 Q And, as far as your cousins, as far as
4 Ms. McCabe's daughters, what, if any, sort of
5 relationship did you have with them, specific to them,
6 beyond sort of your other cousins?

7 A Oh, yes. So for awhile, I think when I was in
8 college or maybe the end of high school, I would help
9 out because there was four girls. So they always had
10 like multiple sports going on and stuff. So I would
11 drive them to and from practices or be there after
12 school if J.J. had to be somewhere.

13 So I spent a good amount of time with them,
14 basically babysitting but more just driving around and
15 stuff like that.

16 Q And through them, is that how you came to know
17 Mr. O'Keefe's niece, (c) ?

18 A Yes.

19 Q And you gave her rides to places, as well?

20 A Yeah. Occasionally when she would come back
21 to the house after school, I'd drive her to CCD or
22 whatever.

23 Q And had you ever met, to your recollection,
24 John O'Keefe or anybody by the name of Karen Read prior
25 to January 28th?

1 A John O'Keefe, no. I mean, I could have. He
2 could have came into the house once when I was there at
3 my Aunt J.J.'s house, and we could have said "hi." But
4 I don't remember formally meeting him, and I never met
5 Karen Read, either.

6 Q And on that evening, again, of January 28th or
7 the early morning of January 29th, beyond the people
8 that you've already talked about and specifically
9 John O'Keefe or Karen Read, did either of them at any
10 point in time come inside your house while you were
11 there that evening?

12 A No. Never.

13 MR. LALLY: Nothing further, Your Honor.

14 THE COURT: Okay. Ms. Little, I'm just going
15 to hold you up for one minute. I think we probably
16 need spellings of kids' names.

17 THE COURT REPORTER: Yes, Your Honor.

18 THE COURT: All right. Thank you, Ms. Little.

19 MS. LITTLE: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. LITTLE:

22 Q Mr. Albert, the first time you ever spoke with
23 anyone from the Massachusetts State Police, the Canton
24 Police Department or the Norfolk County District
25 Attorney's Office was on July 6, 2023, correct?

1 A Yes. I believe so.

2 Q That's a full 18 months after Mr. O'Keefe's
3 death, correct?

4 A Yes.

5 Q Who was present for that hearing?

6 A I spoke with two troopers, I believe, and my
7 lawyer.

8 Q Trooper Proctor was there?

9 A Yes.

10 Q And this interview actually took place at your
11 family's defense attorney's office, correct?

12 MR. LALLY: Objection, Your Honor.

13 THE COURT: The objection is sustained.

14 BY MS. LITTLE:

15 Q This interview took place at your attorney's
16 office, correct?

17 A Yes.

18 Q Your sister, Caitlin Albert, was also present,
19 correct?

20 A She was there for some time but she wasn't
21 when we -- when I was interviewing, she wasn't in the
22 room with me, no.

23 Q And that was also the first time they had
24 spoken with your sister, as well, about these events,
25 correct?

1 MR. LALLY: Objection.

2 THE COURT: Sustained.

3 BY MS. LITTLE:

4 Q And, to be clear, the Massachusetts State
5 Police only interviewed you after you were called to
6 testify before a grand jury --

7 MR. LALLY: Objection.

8 MS. LITTLE: -- in a separate proceeding,
9 correct?

10 THE COURT: The objection is sustained.

11 BY MS. LITTLE:

12 Q I want to direct your attention to your
13 testimony regarding your cousin, Colin Albert. You
14 testified today that Colin Albert called you to come to
15 the house, correct?

16 A I believe so. He did, yeah.

17 Q Do you recall some prior testimony in which
18 you said that you all had exchanged Snapchats about what
19 you were doing that night at the house?

20 A No. I don't believe I said that. I said for
21 him to know that I was at the house, he could have seen
22 a Snapchat that I had sent. But he didn't ask me on
23 Snapchat if he can come over. I said more of that he
24 could have seen a Snapchat saying that we were at my
25 house and that's how he knew. Because I didn't know how

1 he knew that we were there.

2 Q You and your cousins frequently communicate on
3 Snapchat, correct?

4 A Occasionally here and there.

5 Q You actually have a cousin group chat on
6 Snapchat, don't you?

7 A Yeah, we do, an Albert Cousin group chat.

8 Q Who else is on that Snap Chat?

9 A All my cousins. A lot of us. A good amount
10 of my cousins.

11 Q Would that include you?

12 A Yes.

13 Q Colin Albert?

14 A Yeah.

15 Q Allie McCabe?

16 A No. She's not an Albert.

17 Q Do you have a group chat in which Allie McCabe
18 is a member?

19 A I believe we have cousins on my mom's side who
20 chat, yes. But she wouldn't be in that group chat with
21 Colin. No.

22 Q Understood. And do you still have any of the
23 messages you exchanged with your cousin on January 28th?

24 A I don't know. Can you rephrase the question?

25 Q Do you have any of those Snap Chat messages or

1 other messages that you exchanged with your cousin,
2 Colin Albert, on January 28th?

3 A No. I'm not even sure if there was any
4 messages. Not to my knowledge. I don't know.

5 Q Mr. Albert, you testified that Colin arrived
6 around 10:45 or 11:00 p.m., correct?

7 A Today I said that? Yes.

8 Q Yes.

9 A Yes.

10 Q Who else was at the house when the clock
11 struck midnight as it became your birthday?

12 A When it hit my birthday, it was just Colin,
13 Julie Nagel and Sara that was there.

14 Q Was there any sort of celebration for your
15 birthday when the clock struck midnight?

16 A No.

17 Q What were you guys doing?

18 A We were just sitting there. Probably "happy
19 birthdays" were exchanged, but it was nothing crazy.
20 I'm not a big birthday person like that.

21 Q And where in the house were you guys at that
22 point?

23 A In the dining room area.

24 Q You testified that your parents and
25 Brian Higgins arrived shortly after midnight with

1 your sister, correct?

2 A Yeah. I believe I said around 12:05, 12:10.
3 In that area.

4 Q Describe what happened when they came into the
5 house that night.

6 A They all just walked in the door. And, at
7 that point, my cousin, Colin, was standing up to leave.
8 They passed each other, said "hi," and that was it.

9 Q Mr. Albert, you never actually observed Colin
10 leave in a vehicle from 34 Fairview, correct?

11 A No. I didn't see it with my eyes. No.

12 Q In fact, you said you only looked out the
13 window two times that night, correct?

14 A Yes. That's true.

15 Q Approximately what time did your dad go
16 upstairs to get Chloe to take her out?

17 A That would have been like as soon as he got
18 home. So around like a little after 12:00.

19 Q So would that have been before or after Colin
20 sort of walked towards the door?

21 A Colin had already left at that point.

22 Q Where did your dad go?

23 A He went upstairs into his bedroom, where Chloe
24 was there, brought her downstairs and went to the back
25 door and let her out.

1 Q And you were asked by Mr. Lally if your father
2 kind of stands by the door and waits for Chloe before he
3 lets her in?

4 A Yeah.

5 Q But you testified that he was just generally
6 in the kitchen area, correct?

7 A Yeah. The kitchen that is by the back door.

8 Q But he's not standing by the door, waiting for
9 her. She's an off-leash dog. She can go out and do her
10 business and you can open the door sometime later,
11 correct?

12 MR. LALLY: Objection.

13 THE COURT: Can you answer that? Is that
14 correct?

15 THE WITNESS: Could you say it again, please?

16 BY MS. LITTLE:

17 Q Your father wasn't standing by the door,
18 staring at Chloe the entire time that she was outside,
19 correct?

20 A No. Not the whole time, no.

21 Q You testified earlier that Julie Nagel went
22 outside to speak with her brother to indicate that she
23 no longer needed a ride. Do you recall that testimony?

24 A I'm not sure if I said that exactly, but yeah.

25 Q Can you describe sort of what you saw the

1 first time you looked out the window?

2 A I just saw a little -- in front of the
3 driveway a little bit, I saw a truck. I saw my friend,
4 Julie, at the passenger door, I suppose talking to the
5 people in the truck. And a little ways up, I saw another
6 dark SUV that I wasn't aware of.

7 Q And so you'd agree that there was nothing
8 obstructing the view between the truck and the dark SUV,
9 correct?

10 A Well, not from my vantage point, no.

11 Q And the second time you looked out the window,
12 the only difference you saw was that Ms. Read's vehicle
13 had pulled up, correct?

14 A Well, I didn't know it was Ms. Read's vehicle.
15 But the car that was there had moved up, yes.

16 Q And the truck was no longer there, correct?

17 A The second time I looked out the window?
18 That, I'm not sure of.

19 Q Would it refresh your recollection to take a
20 look at your testimony?

21 A Sure.

22 Q From July 6, 20 -- I'm sorry. May 18th, 2023.

23 MS. LITTLE: May I approach, Your Honor?

24 THE COURT: Yes. Show Mr. Lally.

25 BY MS. LITTLE:

1 Q If you would just look at those first few
2 lines. You can look up when your recollection is
3 refreshed.

4 A Okay. Yes.

5 Q Does that refresh your recollection as to what
6 you testified to?

7 A Sure. Yes.

8 Q On May 18th, 2023?

9 A Yes.

10 Q Isn't it true that you said that the second
11 time you looked out, you saw that there was a black SUV
12 that had pulled forward, correct?

13 A Yes.

14 Q But the truck was no longer there?

15 A Sure. It seems like I said that then. Yes.

16 Q You also testified earlier that you saw tire
17 tracks in the snow, correct?

18 A Yes.

19 Q Where were those tracks?

20 A Just along the side towards where -- towards
21 the driveway, along this way, going up towards the
22 flagpole.

23 Q And you viewed those tracks kind of leading up
24 towards the flagpole, correct?

25 A Yes.

1 Q So you'd agree that the visibility and
2 lighting in front of the house was good enough that you
3 were able to see tire tracks in the snow, correct?

4 A Sure.

5 Q But you did not see a 220-pound man lying in
6 the snow in your front yard, did you?

7 MR. LALLY: Objection.

8 THE COURT: Is that something that you saw,
9 sir?

10 A No. I didn't see it.

11 Q Who was in the house the second time that you
12 looked out the window?

13 A It would have been my mom, my dad,
14 Brian Higgins, my sister, Julie, Uncle Matt.

15 Q Mr. Albert, you testified on May 18, 2023 in
16 another grand jury.

17 A Uh-huh.

18 Q And you said, quote (as read), "I'm not sure
19 if Brian Higgins was still there. I know he left at
20 some point."

21 Do you recall that testimony?

22 A Yeah. I know he left my house at some point.
23 I just don't know exactly when it was.

24 Q You were asked specifically at the time that
25 you looked out the window who was there. And you said,

1 I'm not sure if Brian Higgins was there; isn't that
2 correct?

3 A Okay. If I said that, yes, because I was not
4 sure. I'm still not sure if he was there or not.

5 Q So you're not sure whether Brian Higgins was
6 there when you looked out the window, correct?

7 A I'm not sure.

8 Q You have no independent recollection as you
9 sit here today where Mr. Higgins was when you looked out
10 the window, correct?

11 A No.

12 Q You also didn't recall Mr. Higgins ever saying
13 "goodbye" to you or your group, correct?

14 A I believe that's true, yeah.

15 Q In fact, you actually testified before another
16 grand jury on May 18th, 2023 that at some point,
17 Mr. Higgins just wasn't there anymore. I must have gone
18 to the bathroom or something. I came back and I said,
19 where did Higgins go? And he was -- they said he left,
20 correct?

21 A Sure. Yes.

22 Q You also testified before that grand jury --

23 MR. LALLY: Objection, Your Honor.

24 THE COURT: Yes. I'm going to see you at
25 sidebar and if you could bring that, please.

1 (Whereupon, there was a sidebar conference as
2 follows:)

3 THE COURT: So are these prior inconsistent
4 statements or are you just reading his testimony?

5 MS. LITTLE: Well, those are prior
6 inconsistent statements because he said that -- he
7 just testified that Higgins was there.

8 THE COURT: Okay. What are you reading now?
9 What do you --

10 MS. LITTLE: I can rephrase it.

11 THE COURT: Okay. Don't just read that
12 testimony. Okay?

13 MS. LITTLE: Okay.

14 THE COURT: All right. Ask the question.
15 And, if it is a prior inconsistent statement, then
16 you can impeach him. But don't just read it.

17 MS. LITTLE: Sure. Sure.

18 (Whereupon, the sidebar conference concluded.)

19 BY MS. LITTLE:

20 Q When did your father leave in relation to
21 Brian Higgins?

22 A Leave? Do you mean like go upstairs and go to
23 bed or --

24 Q Leave your view.

25 A He would have left after Brian Higgins had

1 gone.

2 Q Mr. Albert, isn't it true that you weren't
3 quite so sure about that when you testified on May 18,
4 2023?

5 A I don't know. You would have to show me.

6 Q Do you have a specific recollection of your
7 father leaving after Mr. Higgins was gone?

8 A Yes. I'm pretty sure he went upstairs after
9 Brian Higgins left.

10 Q Mr. Albert, I'd like to show you --

11 MS. LITTLE: May I approach, Your Honor?

12 THE COURT: Yes.

13 MS. LITTLE: Mr. Lally.

14 BY MS. LITTLE:

15 Q If I could draw your attention to Lines 15 to
16 19.

17 A All right. Uh-huh.

18 Q Mr. Albert, isn't it true that you told the
19 grand jury (as read), "I'm pretty sure Mr. Higgins left
20 first before my dad went upstairs because he wouldn't
21 have left if his friend was still there"?

22 A Yes. I just said that here, as well.

23 Q Meaning you don't have any specific
24 recollection as you sit here today where your father was
25 or where Mr. Higgins was when you looked out the window

1 that night?

2 A No.

3 Q Correct?

4 A No. That's not true. I know that my father
5 was in the room with us. I'm saying I don't know -- I'm
6 saying I don't know when Brian Higgins left the house.
7 And, when Brian Higgins left the house, then my father
8 went upstairs into his bedroom.

9 Q But what you actually said was, quote (as
10 read), "I'm pretty sure Mr. Higgins left first before my
11 dad went upstairs because he wouldn't have left if his
12 friend was still there." Correct?

13 A I see what you're saying. Yes. But I still
14 say that my dad wouldn't have went upstairs until
15 Brian Higgins left the house.

16 Q And that's based on an assumption, correct?

17 A Sure.

18 Q Because you weren't interviewed about this
19 case until 18 months later, correct?

20 A Yeah.

21 Q You did not personally observe your father go
22 upstairs, correct?

23 A No. I did. I watched him go up the stairs.
24 I was standing by the kitchen and you can see the stairs
25 right there.

1 Q Your testimony is you can see individuals walk
2 upstairs in your house --

3 A Depending on --

4 Q -- from the kitchen?

5 A Yes. The dining room, from the dining room.

6 Q There is actually a wall that kind of blocks
7 the dining room to the stairs, correct?

8 A Not if you're sitting at the two chairs with
9 your back to the windows. If I was sitting in the chair
10 right here, the stairs would be right here. I could
11 easily see through the doorway.

12 Q But, as you sit here today, you don't know
13 what time that happened, correct?

14 A No. I don't know the time. No.

15 Q Mr. Albert, I'd like to direct your attention
16 to the morning of January 29th.

17 A Sure.

18 Q Can you describe sort of how you woke up that
19 morning?

20 A My dad just knocked on my door. And I woke up
21 and opened the door.

22 Q You didn't hear any dog barking?

23 A No.

24 Q You didn't see any emergency vehicles?

25 A No.

1 Q You didn't hear any ambulances?

2 A No.

3 Q You didn't hear any screaming outside?

4 A No.

5 Q What did you do once you woke up?

6 A I went downstairs.

7 Q Did you ever look out the window?

8 A I don't recall if I did or not.

9 Q Would it refresh your recollection to take a
10 look at your grand jury testimony from May 18th, 2023?

11 A Sure. Thank you.

12 THE COURT: Would you tell Mr. Lally what page
13 it is?

14 BY MS. LITTLE:

15 Q If you could read this section.

16 A Yes.

17 Q Is your recollection refreshed?

18 A Sure. Yes.

19 Q Why didn't you look out the widow that
20 morning?

21 A Well, I say here that it would just give me
22 anxiety to look out the window.

23 Q Is there a reason that you didn't want to look
24 outside?

25 A I'm just an anxious person, and I got

1 overwhelmed. I think most people would be overwhelmed
2 in that situation.

3 Q Did you say that this was kind of a new thing
4 for you, for cops and police to be at the house?

5 A Yeah. That's never happened before. I've
6 never had the cops at or near my house.

7 Q And it made you overwhelmed, correct?

8 A Yeah. I get overwhelmed easy. So...

9 Q Mr. Albert, how many times did you discuss
10 this case with members of your family before you spoke
11 to the Massachusetts State Police on May 18th, 2023?

12 A I don't have an answer for that. I don't know
13 how many times.

14 Q Hundreds?

15 A We talk about it pretty decent, I mean,
16 considering. Yeah.

17 Q What members of your family have you discussed
18 this case with?

19 A My parents, my sister, occasionally my
20 Aunt J.J.

21 Q Would you say it's been hundreds of
22 conversations?

23 A Well, I guess you can -- I mean, I guess you'd
24 have to split it up and quantify what conversations were
25 about the actual case and what conversations have been

1 the harassment we've faced since then.

2 Q And all of these discussions took place with
3 you and members of your family prior to your interview
4 with the Massachusetts State Police, correct?

5 A No.

6 Q So you've continued to speak with them about
7 this case since your interview?

8 A I don't know what you mean by "this case."
9 "This case" meaning the actual case at hand or just the
10 case about the harassment we faced?

11 Q I'm talking about what happened on January
12 28th and January 29th.

13 A Yeah, but there's really nothing to talk about
14 about those specifics, no, because we had nothing to say
15 about that. Weren't a part about it.

16 Q Mr. Albert, you looked out the window multiple
17 times on January 29th, correct?

18 A Twice, I think I said.

19 Q You never heard any sort of commotion outside?

20 A No.

21 Q You never heard screaming, yelling or the
22 screech of brakes in the front yard?

23 A No.

24 Q You never saw a 220-pound man in dark clothes
25 in the white snow on your front lawn?

1 A No.

2 Q But you did see those tire tracks, correct?

3 A I did.

4 MS. LITTLE: No further questions.

5 THE COURT: Okay. Mr. Lally?

6 MR. LALLY: No redirect, Your Honor.

7 THE COURT: I'm sorry?

8 MR. LALLY: No redirect.

9 THE COURT: All right. Mr. Albert, you are
10 all set, sir.

11 THE WITNESS: Thank you.

12 (Whereupon, the witness is excused.)

13 THE COURT: All right. Mr. Lally, your next
14 witness, please.

15 MR. LALLY: Yes, Your Honor. The Commonwealth
16 calls Ms. Caitlin Albert to the stand.

17 Whereupon,

18 CAITLIN ALBERT

19 having been first duly sworn, was examined and testified
20 under oath as follows:

21 THE COURT: Go ahead, Mr. Lally.

22 MR. LALLY: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. LALLY:

25 Q Good afternoon.

1 A Good afternoon.

2 Q Could you please state your name and spell
3 your last name for the jury?

4 A Sure. Caitlin Albert. C-A-I-T-L-I-N
5 A-L-B-E-R-T.

6 Q And where do you live, ma'am?

7 A I live in Easton.

8 Q And how long have you lived there?

9 A About three years.

10 Q And who, if anyone, do you live there with?

11 A I live with Tristin Morris, my boyfriend.

12 Q And you and Mr. Morris, about how long have
13 the two of you been dating?

14 A Almost eight years.

15 Q Now, prior to living in Easton, where was it
16 that you lived before that?

17 A I lived in Canton,

18 Q And specifically where in Canton did you live?

19 A 34 Fairview Road.

20 Q And how long was it that you lived at 34
21 Fairview Road?

22 A Jeeze. I lived there from about 2011 to 2021.

23 Q And that was a family home; is that right?

24 A Yes.

25 Q And who did you live at 34 Fairview Road with?

1 A My mom, my dad, and my four siblings.

2 Q And your mom's name is Nicole; is that right?

3 A Yes.

4 Q Okay. And your dad or your father's name is
5 Brian Albert?

6 A Yes.

7 Q And how many siblings do you have? I'm sorry.

8 A I have four.

9 Q And are you the oldest?

10 A I am.

11 Q And do you work, ma'am?

12 A I do.

13 Q What do you do for work?

14 A I work for the Massachusetts Attorney
15 General's Office in the Medicaid Fraud Division.

16 Q And how long have you been doing that?

17 A Almost three years, I think. In September, it
18 will be three years.

19 Q Ma'am, if I could turn your attention to
20 January 28th, 2022 into January 29th of 2022. Do you
21 recall that time frame?

22 A I do.

23 Q And do you recall what days of the week they
24 were?

25 A I actually am not sure that I recall the exact

1 day of the week, meaning Friday or Saturday.

2 Q Fair to say around the weekend time?

3 A Yeah. The weekend, definitely.

4 Q And, as far as your family is concerned, the
5 29th, what, if any, significance does that day have?

6 A That would be my brother's birthday.

7 Q And which of your brothers was -- which of
8 your brothers is it whose birthday that was?

9 A Brian Albert, Jr.

10 Q And, beyond Brian Albert, Jr., just for the
11 sake of my own lack of confusion, is there some other
12 name that you would call him as far as differentiating
13 him between your father?

14 A Little Brian sometimes, even though he's not
15 so little.

16 Q Okay. And so during the course of that week
17 sort of leading up to the weekend, what, if any,
18 discussion did you have with your mother or anybody else
19 in your family in regard to Little Brian's birthday?

20 A So leading up to that weekend, I was aware
21 that my brother might have like a friend or two over the
22 house for his birthday. And then I had spoken with my
23 mom and my aunt, Julie Albert, about maybe going to a
24 local Canton bar, grabbing some food and some drinks and
25 just kind of seeing where the night takes us and then

1 maybe ultimately going back and seeing my brother for
2 her just to say "happy birthday" and kind of end the
3 night that way.

4 Q And, as the week went along, what, if
5 anything, sort affected or changed plans in reference to
6 that?

7 A Nothing that I can really think of. Nothing
8 really changed. I mean, that was sort of -- I don't
9 remember exactly how the plan came about that we were
10 going to, you know, go get food and that my brother was
11 going to have friends over. But I believe that that was
12 always sort of our plan.

13 Q And so specifically on the 28th, at some point
14 you came to Canton, correct?

15 A Yes.

16 Q And do you recall how you came to Canton and
17 where was it that you went first?

18 A So I can't say for sure. From what I
19 remember, I believe that my boyfriend, Tristin; and I
20 went straight from Easton to the Waterfall and actually
21 got there before my mom and my Aunt Julie, from what I
22 can remember. And then my mom and Julie ended up
23 meeting us there. And that's when we sort of started
24 just kind of hanging out, ordering food and some drinks.
25 And we were there for a little bit, just the four of us.

1 Q And do you recall about what time it was that
2 you got to the Waterfall?

3 A Unfortunately, I can't remember an exact time,
4 but it would have been around like dinnertime. So if I
5 had to guess, maybe like six.

6 Q And, as far as drinking was concerned with
7 that night, you were at a bar and you weren't driving,
8 correct?

9 A Yeah. I was not driving.

10 Q And do you recall specifically what kind of
11 drinks you had or what you had to drink that night?

12 A I believe that night I was drinking White
13 Claw, I think.

14 Q And your boyfriend, Mr. Morris, as far as --
15 what, if anything, was going on with him that night as
16 far as how long was he at the Waterfall?

17 A Yeah. So we were aware that it was likely
18 going to snow that night. So my boyfriend, Tristin, had
19 gotten offered to do some like plowing or shoveling. So
20 he knew that he was going to have to probably be up for
21 the majority of the night, into the morning, doing some
22 shoveling. So he didn't stick around at the Waterfall
23 for too long. I think he had some food, maybe like one
24 or two drinks. And then he actually ended up going
25 home.

1 Q And you stayed at the Waterfall after he went
2 home?

3 A I stayed there, yeah, with my mom and my Aunt
4 Julie.

5 Q And if you recall as far as that evening at
6 the Waterfall, what, if anything, was going as far as
7 like live entertainment?

8 A I want to say that there might have been a
9 band. I just don't want to say for sure. But I think I
10 do recall a band coming in and setting up. Yeah. I
11 think that there might have been one.

12 Q Now, as far as the evening progressed and it
13 went on, who, if anyone, else came into the Waterfall
14 and sort of joined your group when you were there?

15 A Sure. So I can't say for sure like times of
16 people arriving or order of people arriving. But I know
17 at one point my uncle, Chris Albert, he ended up joining
18 us. He owns a pizza shop across the street. So when he
19 was done working, he came and joined us.

20 And then my aunt, Jen McCabe, and her husband,
21 Matt McCabe, joined us. And then at some point my
22 father, Brian Albert, and his friend, Brian Higgins,
23 also joined us. So at one point in time -- I'm not sure
24 the order of which, you know, everybody came in or the
25 time that they came in, but at some point we were all

1 kind of there, hanging out.

2 Q Now, and your father and Mr. Higgins, do you
3 know where they had come from or where they were coming
4 from?

5 A Yes. I believe they were coming from New York
6 from a funeral. And I remember I had asked my mom is
7 dad going to stop by. And she was like, I don't know if
8 he's tired. He's coming back from New York now. I was
9 like, oh, I want to see him. So I think I convinced him
10 to come and then Brian Higgins just kind of tagged
11 along.

12 Q Now, as far as Mr. Higgins was concerned, is
13 that someone that you were familiar with prior to this
14 evening of the 28th?

15 A I knew of him and I had met him a couple of
16 times. But nothing more than that.

17 Q And, as far as you're aware, the house that,
18 for lack of a better term, you grew up in or spend some
19 formative years in, had Mr. Higgins ever been over to
20 that house at 34 Fairview when you were there?

21 A Not that I know of.

22 Q Now, at some point later in the evening, who,
23 if anyone else, came and sort of -- came up to your
24 group or joined your group while you were at the
25 Waterfall?

1 A So from what I can remember, I remember
2 sitting at like a high-top table. And it was me and my
3 mom sitting next to each other, and we were facing like
4 the front door of the Waterfall. And I recall a man and
5 a woman walking in. And, at first, I didn't know who
6 either of them were, but I noticed that the man started
7 talking to like some of my aunts and uncles that I was
8 with. And he seemed friendly with the people that were
9 in our group.

10 So I had said to my mom, oh, who is that? And
11 she said, oh, that's John O'Keefe. And I had known of
12 him because I knew his story about his niece and his
13 nephew and his family. So I had known of him but had
14 never met him before. And so then I -- and I just
15 assumed that the woman that was with him was his
16 significant other/girlfriend/wife. I didn't know.

17 So then I didn't really speak to either of
18 them. I think at one point John came up to me and my
19 mom and asked like, do you guys need anything? Do you
20 need a drink? And we said, no. And that was pretty
21 much it.

22 Q And so when you say you knew of John O'Keefe
23 and sort of his story as you related, do you recall
24 how it was that you came to know anything about
25 Mr. O'Keefe, or who was it through that you came to know

1 about Mr. O'Keefe?

2 A Well, in general, it was kind of like a known
3 thing, you know, the tragedy of what happened in the
4 O'Keefe family. And so I had just kind of heard that
5 story. And then, on top of that, John O'Keefe's niece
6 is either the same age or around the same age as some of
7 my younger cousins. So I knew that she was friendly
8 with them. I knew that my aunt, Jen McCabe, would like
9 help out here and there, going to sports, going to
10 different events, whatever. I know that my Aunt Jen was
11 friendly with John O'Keefe and I knew that my
12 Aunt Julie and Uncle Chris were somewhat friends with
13 him, as well.

14 Q And, just to be clear, when you're talking
15 about some of your younger cousins, the younger cousins
16 you're speaking of, who are their parents?

17 A Yes. So the younger cousins that I'm
18 referring to would be the McCabe girls. And their
19 parents are Jen McCabe and Matt McCabe.

20 Q And they were present at the Waterfall that
21 evening, as well?

22 A Jen and Matt were, yes.

23 Q Now, with reference to Mr. O'Keefe and his
24 significant other that you've described, had you ever
25 met them prior to that evening?

1 A I had not, not to my knowledge. I wouldn't be
2 surprised if maybe there was like a sporting event or
3 something where we, you know, met each other in passing.
4 But I had never formally met John or the woman that he
5 was with.

6 Q And so on that evening of January 28th, you
7 had never met nor were you aware of anybody by the name
8 of Karen Read?

9 A No, I was not.

10 Q And, if you know, about what time was it that
11 they came into the Waterfall and came over to your
12 group?

13 A I can't say for sure. I'm not sure of a time.

14 Q But fair to say the other people that you
15 testified about as far as your uncles and your aunts and
16 things like that, were they all there at the time that
17 Mr. O'Keefe and Ms. Read came in?

18 A I believe so. I believe that everyone who was
19 there in the group that I was with was present when
20 John O'Keefe and Karen Read arrived.

21 Q And about what time was it that things started
22 to wind down as far as the Waterfall was concerned?

23 A Again, I'm the worst with times. But I would
24 say it was around like twelve-ish that we kind of said,
25 you know, let's kind of head out and head home. I would

1 say twelve-ish, approximately.

2 Q Now, during the course of the time that
3 you were at the Waterfall, either before or after
4 Mr. O'Keefe and Ms. Read arrived, how would you describe
5 sort of the mood or the demeanor of the group that you
6 were with?

7 A I mean, I didn't notice any issues or any
8 negative things happening. All the conversations seemed
9 positive, light-hearted. Everyone was just kind of
10 having a good time, getting along. I didn't notice
11 anything out of the ordinary, really.

12 Q So no issues as far as fighting or tension
13 between your group; is that correct?

14 A Correct.

15 Q And, as far as you saw with regard to
16 Mr. O'Keefe and Ms. Read, no issues as far as fighting
17 or tension that you had observed between the two of
18 them?

19 A Not that I observed.

20 Q And around twelvish or so when you started to
21 leave, who was at that -- how did you come to leave and
22 who did you leave with?

23 A So I left with my mom and my dad. And, again,
24 I'm not sure of the order of when like everybody else
25 left. But I went with my mom and my dad back to 34

1 Fairview Road.

2 Q And, if you recall, who drove home from the
3 Waterfall to 34 Fairview?

4 A My dad.

5 Q And about how long a drive is that from the
6 Waterfall to Fairview Road?

7 A I would say like five or six minutes, give or
8 take.

9 Q And, when you arrived to the house at 34
10 Fairview, do you recall where your father parked in
11 relation to the house?

12 A From what I can remember, he parked in the
13 driveway. I -- yeah. The driveway.

14 Q And, if you know, about how many other cars
15 were in the driveway when you parked there?

16 A I'm not sure. I know there was at least like
17 one or two. But I can't say for sure. I just don't
18 really remember how many were in the driveway at the
19 time. I had like younger siblings in college at the
20 time who would sometimes take some of the cars. So I
21 just don't remember for sure.

22 Q And, if you know, essentially, within the
23 driveway, there is a garage at the end of the driveway;
24 is that correct?

25 A Yes.

1 Q And there is a door on the left, a door on the
2 right; is that right?

3 A Yes.

4 Q And do you recall whether or not your father
5 pulled into the driveway on the left side or the right
6 side in relation to those doors?

7 A I don't remember.

8 Q And, when you came into the house, do you
9 remember how it was that you came from the vehicle to
10 the house?

11 A Yes. From what I remember, I went in the
12 front door. So I would have gotten out and walked on
13 the brick path over to the front door area, walked up
14 the steps and then walked through the door that enters
15 into like a foyer area.

16 Q And, just to be clear, sort of when you walk
17 into that front door with the foyer area, what, if
18 anything, is right in front of you?

19 A So when I first walked in, I actually had seen
20 my cousin, Colin. He was standing in the foyer area.
21 And I remember I said to him, oh, hi. What --

22 MR. YANNETTI: Objection.

23 THE COURT: Next question. Not what you said
24 to him. Okay? Next question, Mr. Lally.

25 BY MR. LALLY:

1 Q Taking you back to sort of when you're exiting
2 the waterfall and when you're exiting your parents'
3 vehicle and walking in the house, what, if anything, did
4 you observe as far as the weather at that point?

5 A I remember at that point the snow was
6 definitely coming down, and I could tell that it was
7 like progressively getting worse.

8 Q And so you walk into the home in the front
9 foyer area. That's where you run into your cousin,
10 Colin?

11 A Yes.

12 Q And how is Colin related to you as far as how
13 is he your cousin?

14 A So Colin is Julie Albert and Chris Albert's
15 son. So he's my first cousin.

16 Q And, when you walk in and you sort of bump
17 into him, where was it that he was going?

18 A He told me that he was --

19 MR. YANNETTI: Objection.

20 THE COURT: Not what he told you. Where was
21 he going?

22 THE WITNESS: To my knowledge, he was going
23 home.

24 MR. YANNETTI: Objection. Move to strike.

25 THE COURT: Next question. Next question.

1 BY MR. LALLY:

2 Q From the time that you walked in and bumped
3 into Colin sort of in the foyer of the home, how long
4 was it that he was in the home while you were there?

5 A I would say --

6 MR. YANNETTI: Objection.

7 THE COURT: How long was he in the home when
8 you were there?

9 THE WITNESS: Minutes.

10 BY MR. LALLY:

11 Q And from your group, this includes yourself,
12 your mother and your father; is that correct?

13 A I'm sorry. What was that?

14 Q From your group when you enter the home, that
15 includes you and your mother and your father, correct?

16 A Yes.

17 Q And who, if anyone else, from the Waterfall
18 arrived at your home around the same time as yourself,
19 your mother and your father?

20 A I believe that Brian Higgins was the next to
21 arrive. I think he very shortly after came inside after
22 myself and my mom and dad.

23 Q And so when Mr. Higgins comes into the house
24 at 34 Fairview, are you already in the house?

25 A I was already inside, yes.

1 Q And so do you have any idea what Mr. Higgins
2 was driving that evening or where he parked it?

3 A I do not.

4 Q And then once you come into the house, at some
5 -- well, when you come into the house, where is it
6 within the home that you go?

7 A So I walked in through the foyer. And then I
8 took a right turn which leads into like the dining room
9 area. And that's where my brother, Brian, and two of
10 his friends were just sitting around the dining room
11 table. So I said "happy birthday" to him. We were just
12 kind of hanging out in there for a little bit.

13 Q And the friends that you observed in that sort
14 of kitchen/dining area, the friends of your brother,
15 Brian, Little Brian, what were their names?

16 A Sara Levinson and Julie Nagel.

17 Q And were those people that you were familiar
18 with prior to this evening of January 28th?

19 A Yes.

20 Q And familiar with them as they're friends of
21 your little brother's?

22 A Yes.

23 Q And, with regard to the house after yourself,
24 your mother and your father arrived and then
25 Mr. Higgins after that, who, if anyone, else came to the

1 house that you saw?

2 A My Aunt Jen and my uncle, Matt McCabe.

3 Q And when your Aunt Jen and your uncle, Matt
4 McCabe, arrived, where was Colin?

5 A Colin had left by then.

6 MR. YANNETTI: Objection.

7 THE COURT: I'll allow it.

8 BY MR. LALLY:

9 Q And when Mr. and Mrs., or your uncle and your
10 aunt McCabe come in, where is it that they go within the
11 house?

12 A I believe they did a similar thing. They
13 either entered through the dining room or the kitchen
14 area. But the dining room and the kitchen are like
15 open-floor, kind of all the same room. So we were just
16 all kind of hanging out in that area.

17 Q And, if you know, about how long a period of
18 time were you at your parents' house on Fairview Road
19 that evening?

20 A I would say an hour 45, latest, two hours.
21 But around like an hour and a half, an hour and 45.
22 Yeah. I can't say for sure. That's an estimate.

23 Q And, for the balance of the time that you were
24 there, were you in that same sort of kitchen/dining room
25 area?

1 A Yes.

2 Q And what is it that you were doing, as far as
3 you and the group doing, in that area of the house?

4 A We were just kind of hanging out. I remember
5 that my mom had grabbed like a small speaker and put
6 some music on. We had a couple drinks. And everyone
7 was just kind of like having a good time hanging out.
8 We said "happy birthday" to Brian. That was kind of it.

9 Q And, Ms. Albert, at any point in time when you
10 were within -- well, let me ask you this first:

11 As far as the sort of demeanor or mood within
12 the house, similar to how I'd asked you at the
13 Waterfall, did any of that change once you returned back
14 to your parents' house on Fairview Road?

15 A No.

16 Q So everyone is getting along. No arguments,
17 no tension or anything that you observed?

18 A Correct. Yeah.

19 Q Now, beyond the people that you've just
20 described, did anyone else come into your parents' house
21 that evening while you were there?

22 A No.

23 Q Specifically, Mr. O'Keefe and/or his
24 significant other, Ms. Read, at any point in time while
25 you were there, did they come into your house?

1 A No. Neither of them ever came into the home.

2 Q Now, with regard to the people that you were
3 describing before, at any point in time did the people
4 in the kitchen/dining room area, any of them, leave that
5 area of the house?

6 A I think when my mom, my dad and I first got
7 there, I believe my dad went upstairs to grab the dog to
8 let her out. So yes, he did that. And then I think
9 there was another period of time where my dad might have
10 been showing or maybe -- my mom or my dad were showing
11 Brian Higgins like family photos, photos of one of my
12 brothers who's in the Marines. And that would have been
13 in like the family room area, which still is like --
14 there's an open doorway. So it's not like the door was
15 shut or anything. But, other than that, we all kind of
16 stayed within that dining room/kitchen vicinity.

17 Q Now, with reference to the dog, that was a
18 family dog; is that right?

19 A Yes.

20 Q And your family had the dog when you still
21 lived there on Fairview Road with your parents?

22 A Yes.

23 Q And what was the dog's name?

24 A Chloe.

25 Q And, with respect to letting the dog out, can

1 you describe for the jurors sort of what that process
2 entailed? Was it on a leash or how would the dog be
3 let out?

4 A Sure. So we had like a fenced-in backyard and
5 we had as back door. So we would kind of just open the
6 back door, let her out. She would kind of do her thing
7 and then she would come back in when she was done.

8 Q And your father took care of that when they
9 got home from the Waterfall that evening?

10 A Yes.

11 Q In the family room that you were talking about
12 where the father and/or your mother and Mr. Higgins were
13 as far as the photographs, where is that in relation to
14 the dining room/kitchen area and specifically can you
15 see into that area from the dining room/kitchen area?

16 A Into the family room?

17 Q Yes.

18 A Yes. So there is just sort of like -- it's
19 like a doorway, but there's no door there. It's pretty
20 open. And, if you're standing in the dining room or the
21 kitchen, you can see into the family room for the most
22 part.

23 Q Now, you, at that point, were not living at
24 the address on Fairview Road; is that right?

25 A Correct.

1 Q And, as far as the people that were at the
2 house who did not live at the Fairview home on that
3 night, who was the last person to leave?

4 A I was the last person to leave.

5 Q And, prior to your departure from the house
6 sometime, an hour and forty-five or so after you got
7 there, can you describe the order in which the other
8 people that you've just described were there, what order
9 did those people leave?

10 A I don't remember the order in which everybody
11 left. But I do remember that Sara Levinson,
12 Julie Nagel, my Aunt Jen and my Uncle Matt, they all
13 left in one car. And then Brian Higgins left. But I
14 just don't remember the order. It was probably within
15 like a couple of minutes of each other. But I just
16 don't remember exactly who left first. And then I left
17 pretty shortly after everyone else, as well.

18 Q Now, during the time that you were hanging out
19 in that dining room-kitchen area of the home, at any
20 point in time was your attention drawn to the outside of
21 the house? Did you hear anything, see anything outside
22 of the house?

23 A I did not.

24 Q And, with respect to the front area of the
25 house, at any point in time was there any discussion

1 that you recall about anything going on in that area?

2 A I don't recall a discussion going on about
3 anything happening out front except for at one point,
4 I --

5 MR. YANNETTI: Objection.

6 THE COURT: Let me hear her answer first.
7 Except for what, at one point?

8 THE WITNESS: At one point, I remember that
9 Julie Nagel's brother was supposed to pick her up.
10 So I knew that there was some communication where
11 she told him, never mind. You don't need to pick
12 me up. You can go home. I'm going to go home with
13 Jen and Matt.

14 BY MR. LALLY:

15 Q Now, with respect to your Aunt Jennifer,
16 Jennifer McCabe, what, if anything, do you recall her
17 doing with -- do you recall her having a cell phone that
18 night?

19 A I do.

20 Q And what, if anything, do you recall her doing
21 with respect to that cell phone?

22 A I remember at one point we were standing in
23 the kitchen and I had noticed that she was on the phone.
24 And I remember she said something to the effect of, oh -
25 -

1 MR. YANNETTI: Objection.

2 THE COURT: Not what she said.

3 THE WITNESS: Okay.

4 THE COURT: So next question, Mr. Lally.

5 BY MR. LALLY:

6 Q At some point, did you see her talking on the
7 phone?

8 A I did.

9 Q At some point, did you see her appear to be
10 texting on the phone?

11 A I'm not sure about testing. I definitely saw
12 her speaking with somebody on the phone, though.

13 Q And, at some point, where did she put her
14 phone in relation to where you guys were in the kitchen
15 and dining room area?

16 A I'm not sure.

17 Q Do you recall any sort of charger or anything
18 like that in that area of the home?

19 A I don't.

20 Q Now, as far as -- who picked you up from the
21 house that night?

22 A My boyfriend.

23 Q And Mr. Morris came to the house on Fairview
24 Road and picked you up at some point, about an hour and
25 forty-five minutes or so after you arrived there; is

1 that correct?

2 A Yes.

3 Q Do you recall what Mr. Morris was driving on
4 that particular evening?

5 A I remember that he actually was driving my
6 car, which is a 2019 Jeep Cherokee.

7 Q And what kind of car did Mr. Morris have at
8 that time, if you recall?

9 A At that time, he had a very old, I want to
10 say, like 2012, Ford Taurus. So that's why he took my
11 car, because the Taurus would have never been good in
12 the snow.

13 Q And how was it that you came -- did he call
14 you, text you? How did you know that he was there?

15 A I believe that we texted and that's how I was
16 informed that he was out front.

17 Q So you receive a text something to the effect
18 of "I'm here." And then you go outside?

19 A Yes.

20 Q And, when you went outside, if you recall,
21 what was the weather like when you were coming out of
22 the house?

23 A When I walked outside, I remember, again, the
24 snow was coming down a lot. I remember like sort of
25 trying to watch my step because the stairs and the brick

1 path were pretty snowy. I didn't want to slip. So as
2 far as weather, yeah. I remember it was actively
3 snowing and I was trying not to slip. And that's pretty
4 much what I can remember.

5 Q And do you recall where it was that your
6 boyfriend, Mr. Morris, parked the car in relation to the
7 house when he arrived?

8 A I believe he parked in the driveway.

9 Q So you would have come down the steps, down
10 the walkway to the driveway area, correct?

11 A Yes.

12 Q And who drove from Fairview Road to back home
13 that evening?

14 A Tristin did.

15 Q Now, if you recall, when -- Mr. Morris, I'm
16 assuming, backs out of the driveway; is that correct?

17 A Uh-huh.

18 Q Okay. When he backs out of the driveway,
19 where does the vehicle go in relation to the house?

20 A We went up Fairview Road. So towards the
21 flagpole in our yard.

22 Q And so towards the flagpole with the passenger
23 side facing the house; is that right?

24 A Yes.

25 Q And, if you recall, as Mr. McCabe is driving

1 away from the home, what, if anything, with respect to
2 the weather did he have to employ within the car?

3 A I remember the windshield wipers were on, and
4 I remember he was driving very cautiously, 10 and two.
5 And I remember thinking to myself, oh, the snow is
6 coming down pretty hard.

7 Q And, as you drove past the house, were you
8 looking outside or looking at the house or the front
9 lawn area of the home?

10 A I was not. Once I got inside the car, I was
11 mainly -- my attention was on him, and we were having a
12 conversation. So I hadn't been looking out the
13 passenger window towards my house at really any point.

14 Q So your head was turned towards your
15 boyfriend, who is driving the car to the left of you as
16 he's driving away from the home?

17 A Yes.

18 MR. LALLY: May I have one moment, Your Honor?

19 THE COURT: Yes.

20 MR. LALLY: Nothing further, Your Honor.

21 THE COURT: Okay. Mr. Yannetti?

22 MR. YANNETTI: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. YANNETTI:

25 Q Good afternoon, ma'am.

1 A Good afternoon.

2 Q So, Ms. Albert, you were at your parents' home
3 on January 29th by midnight or shortly thereafter,
4 correct?

5 A Correct.

6 Q And you were the last one to leave at 1:45,
7 2:00 o'clock, somewhere in that area?

8 A Yes.

9 Q On January 29th of 2022 after you got up that
10 day, did you receive a call, a text, any sort of
11 communication from any investigator connected with this
12 case?

13 A I did not.

14 Q Trooper Proctor did not contact you on January
15 29th?

16 A No.

17 Q He did not interview you on January 29th?

18 A He did not.

19 Q What about January 30th?

20 A No.

21 Q 31st?

22 A No.

23 Q How about the entire month of February. Did
24 you hear from Trooper Proctor wherein he set up a
25 meeting or an interview with you?

1 A I did not.

2 Q Then what about the entire rest of 2022? Did
3 Trooper Proctor interview you during that entire year?

4 MR. LALLY: Objection.

5 THE COURT: So the objection is overruled.

6 You can answer that.

7 THE WITNESS: I was not interviewed, no.

8 BY MR. YANNETTI:

9 Q And then in 2023, prior to May of 2023, were
10 you contacted by Trooper Proctor or any investigator for
11 an interview regarding what you just testified to here
12 today?

13 A I don't think so.

14 Q And you hadn't met Mr. Lally by May of 2023,
15 either, correct?

16 A I don't think so.

17 Q But, in May of 2023, you actually called to
18 testify at another hearing where neither the
19 Commonwealth or the defense in this case was present,
20 correct?

21 A Correct.

22 Q Mr. Lally and Ms. McLaughlin were not there
23 and certainly no members of the defense team were there,
24 correct?

25 A Correct.

1 Q And May of 2023 was well over a year after the
2 events that you were called to testify about, correct?

3 A Correct.

4 Q Right? So if these events happened on January
5 28th and 29th of 2022, January of, the end of January of
6 2023 would have been a year. And now you're being asked
7 for the first time to give testimony about what happened
8 back in January of 2022 in May of 2023, correct?

9 A Yes.

10 Q And then it was only after you testified
11 before that other proceeding without the prosecution and
12 defense of this case there that Trooper Proctor finally
13 interviewed you in August of 2023, correct?

14 A That's correct.

15 Q And that was four months after you testified
16 in that other hearing of May of 2023, correct? June,
17 July -- oh, I'm sorry. Three months. June, July,
18 August. Correct?

19 A Correct.

20 Q And it was about a year and a half after
21 January 29th of 2022, correct?

22 A I believe so.

23 Q All right. Now, on direct examination,
24 Mr. Lally had asked you about whether you knew
25 Brian Higgins. Do you remember that line of

1 questioning?

2 A I do.

3 Q And I believe you testified that you knew of
4 Higgins, correct?

5 A Yes.

6 Q And you thought that you had met him a couple
7 of times, correct?

8 A Yes.

9 Q So Brian Higgins you would classify as an
10 acquaintance, correct?

11 A To me?

12 Q Yes.

13 A I would classify him as a friend of my
14 father's, not really an acquaintance or friend of mine.

15 Q Okay. So he didn't rise to the level of an
16 acquaintance, somebody who you met but you didn't really
17 know?

18 A I'm not really sure how I would categorize my
19 relationship with him. Again, it was just more of like
20 he was my father's friend. If I had seen him walking
21 down the street, I would have said "hello" to him. I
22 don't know anything about his personal life. I don't
23 like communicate with him regularly. So I mean, if
24 that's what you would consider an acquaintance, then
25 yes.

1 Q I guess I would ask what do you consider an
2 acquaintance? How would you define that term?

3 A I would say an acquaintance is someone who you
4 are friendly with and might see from time to time. I
5 guess in my head I'm just sort of thinking someone who
6 is closer in age with me. I usually think of it as more
7 of like a friend-type thing and not my father's friend
8 to me. I guess that's just the way I think of it in my
9 head.

10 Q Okay. So is your testimony before this jury
11 that an acquaintance is really a friend?

12 A Someone that you are friendly with perhaps
13 could be.

14 Q Okay. Have you watched any of the testimony
15 in this case prior to your taking the stand today?

16 A I have not.

17 Q Has anybody told you anything about any of the
18 testimony that has occurred prior to your taking the
19 stand today?

20 A No.

21 Q Okay. Who is Katie McLaughlin?

22 A Katie McLaughlin is a girl who I am in the
23 same -- I am the same age as. We went to high school
24 together. We graduated the same year. And we have a
25 couple mutual friends. We interact with some of the

1 same people socially. I don't really -- I can't think
2 of a time, possibly ever, where her and I ever hung out
3 one on one or individually. So more of like a friend of
4 a mutual friend.

5 Q Okay. So you would not consider Katie
6 McLaughlin to be a friend?

7 A She's not a close personal friend of mine.

8 Q I didn't ask you if she was a close personal
9 friend.

10 MR. LALLY: Objection.

11 THE COURT: Let her finish her answer.

12 MR. YANNETTI: Sure.

13 BY MR. YANNETTI:

14 Q I'm sorry. Go ahead. Finish your answer.

15 A I would not consider her one of my, again,
16 close friends.

17 Q Okay. So let's get back to my question.
18 Would you consider her to be a friend --

19 MR. LALLY: Objection.

20 THE COURT: I'll allow that.

21 MR. LALLY: Your Honor, may we approach?

22 THE COURT: Okay. Jurors, feel free to stand
23 up and stretch.

24 (Whereupon, there was a sidebar conference as
25 follows:)

1 THE COURT: What is the objection?

2 MR. LALLY: Your Honor, as it pertains to this
3 witness, I'm not sure what the relevance is of
4 anything to do with her relationship with the
5 firefighter that showed up at her house that
6 morning.

7 THE COURT: Okay. What do you say,
8 Mr. Yannetti?

9 MR. YANNETTI: Okay. What I say is that there
10 has been testimony that she told Trooper Proctor
11 that -- I'm sorry -- that Katie McLaughlin told
12 Trooper Proctor that my client looked at Jen McCabe
13 and said, I hit him, I hit him, I hit him.

14 Katie McLaughlin then testified before this
15 jury to a brand new conversation that was back and
16 forth involving multiple people. And she has
17 admitted under oath that her testimony evolved and
18 that she also admitted it evolved after she learned
19 that 34 Fairview was the Albert home. So this is
20 directly on point to impeach Katie McLaughlin's
21 characterization of their relationship as just
22 acquaintances.

23 We have multiple photographs putting them --

24 THE COURT: I understand. I don't see their
25 testimony as too different, as different. Well,

1 it's --

2 MR. YANNETTI: Right. I'm sorry. I cut the
3 Court off.

4 THE COURT: So I think you've covered the same
5 ground that you are covering or maybe the end of
6 you covering it. You're just shaking your head.
7 So tell me what it is that you expect to ask of her
8 now.

9 MR. YANNETTI: Okay. So I want to impeach her
10 specifically, saying that she doesn't -- no. She's
11 minimizing her relationship with Katie McLaughlin.
12 You know, in addition to "H," "I," "J" and "K,"
13 which were the previous ones that were marked for
14 identification, as I made the Court aware, we
15 received multiple photos after that which were more
16 incriminating in terms of putting the two of them
17 together. They are arm in arm in a lot of photos.
18 They are at a baby shower together, standing right
19 next to each other in a small group. And she is
20 with, this witness is with, her two college
21 roommates and one other person. And that other
22 person is Katie McLaughlin. She is trying to
23 distance herself. And it is crystal clear to me
24 that she has either read social media or she has
25 received some information about the cross-

1 examination that Mr. Jackson did of Katie
2 McLaughlin where there was a big emphasis on her
3 not being a friend and that --

4 THE COURT: Why is that crystal clear to me.
5 There is nothing before me that indicates that.

6 MR. YANNETTI: She used the exact language,
7 which is -- I was asking her if she was a friend.
8 And she immediately jumped to, I don't consider her
9 to be a close friend, which is exactly what Katie
10 McLaughlin said, as well.

11 MR. LALLY: Your Honor, it could also just be
12 the truth.

13 MR. YANNETTI: Well, I'm entitled to explore
14 what the truth is or what the truth isn't.

15 THE COURT: I think we're just about finished
16 with this. I know you feel differently. You don't
17 have to agree with me. I'll give you one more
18 question, but I don't think you're quite --

19 MR. YANNETTI: So I don't get to introduce any
20 of the photos putting them together that depicts
21 the actual relationship?

22 THE COURT: Not based on what I've seen here.
23 What I'll do tonight is I'll go back through my
24 notes on Katie McLaughlin. But for the same reason
25 that she didn't get it with Katie McLaughlin, I

1 don't see you getting it here. I'll give you one
2 or two more questions.

3 MR. YANNETTI: Rather than take the one or two
4 more questions, I'd rather move on to another topic
5 and then revisit it tomorrow morning.

6 THE COURT: Okay. Okay.

7 (Whereupon, the sidebar conference concluded.)

8 BY MR. YANNETTI:

9 Q Okay. Ms. Albert, you know Courtney Proctor,
10 correct?

11 A I know of her, yes.

12 Q And you've been in her company several times,
13 correct?

14 A Yes.

15 Q You've met her children, correct?

16 A Once, yes.

17 Q And you know she is Michael Proctor's sister,
18 correct?

19 A Yes.

20 Q When Michael Proctor ultimately interviewed
21 you in August of 2023, did he ever ask you how well you
22 knew his sister, Courtney Proctor? Did that subject
23 ever come up?

24 A Not that I remember.

25 Q Did you ever mention it to him that, you know,

1 you had met his sister and met his sister's kids?

2 A I did not.

3 Q Now, on January 28th of 2022, you went to the
4 Waterfall with your boyfriend, Tristin Morris, correct?

5 A Yes.

6 Q And, ultimately, he left and you stayed,
7 correct?

8 A Yes.

9 Q The reason that you stayed is you wanted to go
10 back to 34 Fairview, your old home, to be there by
11 midnight when your brother was turning 23, correct?

12 A Not necessarily. My plan was always to stay
13 and just spend some time with my mom and my aunt. But
14 Tristin left very early because he knew that he was
15 going to have to be up at 3:00 o'clock in the morning,
16 shoveling or plowing. So my plan was never to go back
17 with him. But it wasn't necessarily because it was my
18 brother's birthday. It was just what my plan was.

19 Q Certainly the fact that it was your brother's
20 birthday didn't deter you from going back there, right?
21 In other words, the fact that it was your brother's
22 birthday didn't cause you to hesitate to go back. You
23 wanted to be there, right?

24 A Well, my brother, Brian, wasn't at the
25 Waterfall.

1 Q No. I'm talking about -- let's start over.
2 Tristan left, right?

3 A Yes.

4 Q You stayed at the Waterfall?

5 A Yes.

6 Q And you planned to go back to 34 Fairview, did
7 you not?

8 A At some point in time, that was spoken about,
9 and I agreed to go back to 34 Fairview, yes.

10 Q And you went back there to see your family,
11 correct?

12 A Yes.

13 Q Including your brother, Brian, whose birthday
14 it was, correct?

15 A Yes.

16 Q That was your parents' home, right?

17 A Yes.

18 Q You grew up there?

19 A Yes.

20 Q You were comfortable there?

21 A Yes.

22 Q There was plenty of room at the house,
23 correct?

24 A Yes.

25 Q In what sense?

1 A A bunch of bedrooms.

2 Q Not all of them were taken up, correct?

3 A At that time, correct.

4 Q You certainly felt welcome there, correct?

5 A Yes.

6 Q And there was no problem with you staying
7 there overnight, correct?

8 A Correct.

9 Q And, when you made the decision to go there
10 after the Waterfall, you knew there was a snowstorm that
11 was starting, correct?

12 A Yes.

13 Q And you've already testified that when you
14 went back to 34 Fairview, you saw your cousin,
15 Colin Albert, inside the home, correct?

16 A Yes.

17 Q In fact, you walked in and he was one of the
18 first people that you saw, correct?

19 A Correct.

20 Q He's been over your house many times, correct?

21 A Correct.

22 Q You're close with them as your first cousin,
23 are you not?

24 A I am.

25 Q And your brother, Brian, Jr., is close with

1 them, as well, correct?

2 A Yes.

3 Q Colin Albert is close with your parents,
4 correct?

5 A Yes.

6 Q He's certainly welcome at your parents' home,
7 correct?

8 A Correct.

9 Q And it was certainly not shocking to see your
10 first cousin, Colin Albert, at your home, correct?

11 A Correct.

12 Q And you had a brief interaction with him,
13 correct?

14 A Yes.

15 Q That was sort of toward the foyer of the
16 house?

17 A Yes.

18 Q And then you continued deeper into your
19 parents' home and you saw other people there, correct?

20 A Yes.

21 Q Where did you go within the home after you had
22 seen Colin?

23 A I believe I entered through the foyer, into
24 the dining room area.

25 Q All right. And, when you were there, you saw

1 your brother, Brian, whose birthday it was, correct?

2 A Yes.

3 Q He had two friends with him, Julie Nagel and
4 Sara Levinson in that same area?

5 A Yes.

6 Q You greeted them, as well?

7 A Yes.

8 Q And that's where your attention was focused,
9 fair to say?

10 A I would say that once I said "hello" to them,
11 I didn't just sit with them three. I sort of was
12 walking around. I wouldn't say my attention was solely
13 focused on them three, but I did greet them, yes.

14 Q All right. And you were walking around within
15 the kitchen/dining room area?

16 A Yes.

17 Q And once you greeted Colin and left him, it's
18 fair to say that you then were not looking over your
19 shoulder, monitoring what Colin was doing or where he
20 was going, correct?

21 A Correct.

22 Q And, while you were in the kitchen/dining room
23 area, the door to the basement was kind of blocked from
24 your view, was it not?

25 A If I'm in the dining room area, there is a

1 spot in there where I could see it. But I don't believe
2 I could see the basement door. No.

3 Q From your vantage point, the door to the
4 basement is kind of blocked from the area that you were
5 in?

6 A For the most part, yes.

7 Q And you weren't watching Colin to see where he
8 went after you left him, correct?

9 A Correct.

10 Q And you never saw him leave the house
11 physically, correct?

12 A Correct.

13 MR. YANNETTI: This may be a good time to
14 pause. I don't know. Are we going past four?

15 THE COURT: All right. We will pause, then.
16 Thank you.

17 Ms. Albert, we'll bring you back tomorrow.
18 I'm going to ask you to stay here as the jurors
19 file out.

20 Jurors, those same three cautions. Please do
21 not discuss this case with anyone. Don't do any
22 independent research or investigation into this
23 case. If you happen to see, hear or read anything
24 about this case, please disregard it and let us
25 know. Tomorrow is a half day. We'll see you in

1 the morning.

2 (Whereupon, the jury is escorted from the courtroom
3 and excused for the day.)

4 THE COURT: So, Mr. Yannetti, why don't you
5 tell me now what it is you hope to do tomorrow and
6 the basis for it.

7 MR. YANNETTI: Right. So my plan, Your Honor,
8 it is based on the fact that Katie McLaughlin, when
9 she testified, tried to minimize her relationship
10 with Caitlin Albert. The reason why that's
11 relevant is that we have proof that she has
12 changed her story after she learned that 34
13 Fairview was the Albert family home. She was on
14 record with Trooper Proctor, stating -- this is
15 Katie McLaughlin, that what she heard my client say
16 she actually overheard. She heard my client
17 addressing Jennifer McCabe on scene in a hysterical
18 manner, saying allegedly, I hit him. I hit him. I
19 hit him.

20 And that evolved in this case to a multi-part
21 conversation with many different people, including
22 starting with Katie McLaughlin saying, was there
23 any trauma. And my client supposedly responded, I
24 hit. And then a police officer jumps in and asks
25 another question. And my client supposedly said, I

1 hit him. And there were like four different times
2 where my client was responding to others so that it
3 wasn't really this burst of excitement and an
4 excited utterance. She tried to cast it as
5 statements that were made upon reflection, making
6 them sound more ominous and more inculpatory than
7 what they were, particularly because the person to
8 whom my client was speaking, who is no friend of my
9 client, reported that she said, did I hit him,
10 could I have hit him.

11 So we have a clear conflict in the testimony.
12 We have a witness who has admitted that her
13 statement has evolved, and she's admitted that her
14 statement evolved after she learned the identity of
15 the house that she was at, which happens to be the
16 house that Caitlin Albert grew up in. When she was
17 confronted with, you know, who is Caitlin Albert,
18 when Mr. Jackson asked Katie McLaughlin who Caitlin
19 Albert was, there was a long pause and then she was
20 very -- and even the way she phrased it was, I
21 didn't tell him. I went to school with somebody by
22 that name, or it was something to that effect,
23 which just sounded ridiculous. It sounded like it
24 was somebody that she was trying to remember.

25 You know, at that point, we had four photos

1 that we marked for I.D., "H," "I," "J" and "K,"
2 where we have them together. We have them being
3 Facebook friends. We have a nature of the
4 relationship that she tried to conceal, in our
5 view.

6 Since that time, we've been deluged by other
7 photos of the two of them together, including one,
8 you know, intimate photo of them, you know, the
9 four of them -- I'm sorry. When I say "the four of
10 them," I mean Caitlin Albert and her two college
11 roommates. And the only person who's not a college
12 roommate in that photo is Katie McLaughlin.

13 Katie McLaughlin also said that she never went
14 on anything other than occasional day trips with
15 Caitlin Albert. We now know that that's false. We
16 have them together in a hot tub, drinking, in a
17 photo that is from Maine, which is about a four-
18 hour drive away.

19 THE COURT: When is that?

20 MR. YANNETTI: It was posted in 2016, which is
21 another reason that --

22 THE COURT: When did it occur? Did it occur
23 in 2016 --

24 MR. YANNETTI: I think that's the inference.

25 THE COURT: -- or was it posted in 2016?

1 MR. YANNETTI: It was posted in 2016. I think
2 the inference is that's when -- it was a new photo
3 that was uploaded.

4 If I may just have a moment.

5 That location was tagged on 2016. So we know
6 it was after high school, which, again, contradicts
7 Katie McLaughlin's testimony because she made it
8 seem that this was just some girl that I knew in
9 high school and then we happened to be at the same
10 places at various times. But I'm not close with
11 her, despite the fact that I had my arm around her
12 in most of the photos.

13 The other aspect of this, Your Honor, is that
14 she said that she had not -- Katie McLaughlin
15 testified she had not seen Caitlin Albert for, I
16 think, two or three years prior to January of 2022.
17 We have a baby shower photo that is from June of
18 2021. They are standing next to each other.

19 THE COURT: Do you have someone to
20 authenticate that date?

21 MR. YANNETTI: Caitlin Albert will
22 authenticate that date.

23 THE COURT: Why? Why are you sure of that?

24 MR. YANNETTI: Because she is going to --
25 well, she is going to be shown a baby shower which

1 occurred in 2021.

2 THE COURT: Okay.

3 MR. YANNETTI: That's when it's time stamped
4 on social media. And Caitlin Albert, her face and
5 her body, are in that photo. Katie McLaughlin's
6 face and body are in that photo.

7 THE COURT: How many other people are in that
8 photo?

9 MR. YANNETTI: I think there are six. I gave
10 it back to -- oh, thank you.

11 MR. LALLY: Sure.

12 MR. YANNETTI: For the record, it's "S" --

13 THE COURT: Actually, I didn't see those. I
14 thought these were different photos. If I could
15 have those, then you don't need to --

16 MR. YANNETTI: Oh, of course. There are five
17 other people in the photo with them. But they are
18 together on the right side of the photo. I mean,
19 you know, these photos impeach the testimony of
20 Katie McLaughlin multiple times, and we should be
21 allowed to explore the bias of these witnesses,
22 particularly the bias of Katie McLaughlin, who
23 purports to give incriminating testimony against my
24 client, brand new testimony that only existed after
25 she learned of the identity of the homeowners in

1 this case.

2 This is classic bias and classic
3 impeachment evidence. There is no reason why we
4 shouldn't be able to show photographic evidence of
5 this relationship, much like Mr. Lally showing
6 photographic evidence of 34 Fairview, what it looks
7 like. It's intended to assist the jury. And, in
8 doing a 403 balancing test, Your Honor, the
9 probative nature of this evidence greatly outweighs
10 any prejudice. She is able to explain these photos
11 any way she wants when Mr. Lally does his redirect
12 examination of her.

13 But without being able to get into this, Your
14 Honor, Katie McLaughlin's testimony, you know, it's
15 like she's wearing a suit of armor. We can't get
16 through it. We have the tools and the evidence to
17 get through it. We have the ability to expose her
18 as somebody that's misrepresented something very
19 important to this Court. But, if we can't ask
20 these questions and we can't get in these photos,
21 then we are not able to do it.

22 THE COURT: All right. Mr. Lally, what do you
23 say?

24 MR. LALLY: Your Honor, just as far as the
25 authenticity of whatever this is, as far as social

1 media is concerned, there's a variety of ways to
2 fabricate that. And I think it's interesting that
3 Mr. Yannetti is really vague about where these
4 photos came from or how he knows the specifics that
5 he's so sure about, about when they occurred, where
6 they occurred, what state people were in, what day
7 it was, who is college roommates of who within
8 these photographs but has no specifics about, you
9 know, where these deluge of photographs came from.

10 More importantly, Your Honor, what I would
11 submit as far as Ms. McLaughlin is concerned is she
12 was entirely consistent and the disparagement as
13 far as what her testimony has been as far as her
14 statement within the report to Trooper Proctor, her
15 grand jury testimony in this case and her testimony
16 before this jury on the stand were identical if not
17 entirely consistent. And, again, it's not just
18 Ms. McLaughlin that is attributing this statement
19 to the defendant. The jury has heard from two
20 other firefighters as well as anticipated other
21 witnesses who will testify to these exact same
22 statements that the defendant made outside of the
23 house on that date.

24 What counsel I think is referring to as far as
25 the "could I have hit him," is something that the

1 defendant said to Ms. McCabe which was overheard by
2 Ms. Roberts on a speaker phone on the way to
3 Fairview Road. And then she modifies that
4 statement when she's asked specifically about the
5 bruising and how that could have been caused. And
6 it was at that point where she repeats, I hit him.
7 I hit him. I hit him. I hit him.

8 So to then use prior statements through a
9 completely separate witness that has nothing to do
10 with Ms. McLaughlin to try to use that to claim
11 impeachment or bias is ridiculous.

12 And then, as far as it applies to this
13 specific witness, when it comes to impeachment and
14 bias, the case law is very clear that it goes to
15 bias of the witness who is on the stand. And the
16 witness in this case is Ms. Albert, not Ms. McCabe.

17 THE COURT: All right. This will save us some
18 time tomorrow.

19 MR. YANNETTI: Right. Well, the only thing I
20 was going to add, Your Honor, is Mr. Lally's
21 arguments go to the weight and not the
22 admissibility. But I've pulled up my notes, which
23 I'm sure the Court has. She has morphed her
24 statement into -- I asked if there had been any
25 significant trauma. She said, I hit him. Then she

1 repeated it. A woman said, you're hysterical. You
2 need to calm down. She said, I hit him. Then a
3 police officer said, what did you say? She
4 repeated, I hit him.

5 You know, Ms. McCabe, herself, testified in
6 the grand jury that's not what happened, that she
7 said at that moment, did I hit him, could I have.
8 She is on record saying that.

9 THE COURT: All right. Thank you. I'll take
10 a look at my notes and we'll figure this out first
11 thing in the morning.

12 (Whereupon, the Court adjourned at 4:11 p.m.)
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C E R T I F I C A T E

I, Paula M. Mills, retired certified court reporter, do hereby certify that the foregoing pages, page 16-3 to 16-300, is a true and accurate transcription of the voice recording in the aforementioned matter to the best of my skill and ability.

This, the 11th day of February, 2025.

\s\ Paula M. Mills

Paula M. Mills

Retired Certified Court Reporter
and Court Transcriptionist